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PART 1 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT–EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this Part 1 applies.

(b) *Specific discriminatory actions prohibited*. (1) A recipient under any program or activity to which this Part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2)(i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of paragraph (b)(2)(ii) of this section, this Part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part 1 applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this Part 1.

(4) As used in this Part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to part III of Executive Order 11246 or any executive order which supersedes or amends it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this part 1 tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

PART 5 GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart A Generally Applicable Definitions and Federal Requirements; Waivers

5.100 Definitions.

The following definitions apply to this part and also in other regulations, as noted:

1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

ALJ means an administrative law judge appointed to HUD pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.

Covered person, for purposes of 24 CFR 5, subpart I, and parts 966 and 982, means a tenant, any member of the tenant's household, a guest or another person under the tenant's control.

Department means the Department of Housing and Urban Development.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Elderly Person means an individual who is at least 62 years of age.

Fair Housing Act means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.).

Fair Market Rent (FMR) means the rent that would be required to be paid in the particular housing market area in order to obtain privately owned, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. This Fair Market Rent includes utilities (except telephone). Separate Fair Market Rents will be established by HUD for dwelling units of varying sizes (number of bedrooms) and will be published in the *Federal Register* in accordance with part 888 of this title.

Family has the meaning provided this term in §5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

Federally assisted housing (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

(1) Public housing;

(2) Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715*l*(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715*l*(d)(5));

(7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

Gender identity means actual or perceived gender-related characteristics.

General Counsel means the General Counsel of HUD.

Grantee means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.

Guest, only for purposes of 24 CFR part 5, subparts A and I, and parts 882, 960, 966, and 982, means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of parts 966 and 982 apply to a guest as so defined.

Household, for purposes of 24 CFR part 5, subpart I, and parts, 960, 966, 882, and 982, means the family and PHA-approved live-in aide.

HUD means the same as Department.

MSA means a metropolitan statistical area.

NAHA means the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.).

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

NOFA means Notice of Funding Availability.

OMB means the Office of Management and Budget.

Organizational Unit means the jurisdictional area of each Assistant Secretary, and each office head or field administrator reporting directly to the Secretary.

Other person under the tenant's control, for the purposes of the definition of *covered person* and for parts 5, 882, 966, and 982 means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as *premises* is defined in this section) because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control.*

Premises, for purposes of 24 CFR part 5, subpart I, and parts 960 and 966, means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

Public housing means housing assisted under the 1937 Act, other than under Section 8. 'Public housing' includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.

Public Housing Agency (PHA) means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

Responsible entity means: (1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), and the Section 8 project-based certificate or voucher programs (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an ACC with HUD; (2) For all other Section 8 programs, responsible entity means the Section 8 project owner.

Section 8 means section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Secretary means the Secretary of Housing and Urban Development.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201-4655).

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

5.105 Other Federal requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

(a) *Nondiscrimination and equal opportunity*. (1) The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing

regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

(2) *Equal access to HUD-assisted or insured housing.* (i) *Eligibility for HUD-assisted or insured housing*. A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

(ii) *Prohibition of inquiries on sexual orientation or gender identity*. No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

(b) *Disclosure requirements.* The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 et seq.).

(c) *Debarred, suspended, or ineligible contractors and participants*. The prohibitions at 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors and participants.

(d) *Drug-free workplace*. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et seq.) and HUD's implementing regulations at 2 CFR part 2429.

Subpart B Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

5.210 Purpose, applicability, and Federal preemption.

(a) *Purpose.* This subpart B requires applicants for and participants in covered HUD programs to disclose, and submit documentation to verify, their Social Security Numbers (SSNs). This subpart B also enables HUD and PHAs to obtain income information about applicants and participants in the covered programs through computer matches with State Wage Information Collection Agencies (SWICAs) and Federal agencies, in order to verify an applicant's or participant's eligibility for or level of assistance. The purpose of this subpart B is to enable HUD to decrease the incidence of fraud, waste, and abuse in the covered programs.

(b) *Applicability.* (1) This subpart B applies to mortgage and loan insurance and coinsurance and housing assistance programs contained in chapter II, subchapter B, and chapters VIII and IX of this title.

(2) The information covered by consent forms described in this subpart involves income information from SWICAs, and wages, net earnings from self-employment, payments of retirement income, and unearned income as referenced at 26 U.S.C. 6103. In addition, consent forms may authorize the collection of other information from applicants and participants to determine eligibility or level of benefits.

(c) *Federal preemption.* This subpart B preempts any State law, including restrictions and penalties, that governs the collection and use of income information to the extent State law is inconsistent with this subpart.

5.212 Compliance with the Privacy Act and other requirements.

(a) *Compliance with the Privacy Act.* The collection, maintenance, use, and dissemination of SSNs, EINs, any information derived from SSNs and Employer Identification Numbers (EINs), and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

(b) *Privacy Act notice.* All assistance applicants shall be provided with a Privacy Act notice at the time of application. All participants shall be provided with a Privacy Act notice at each annual income recertification.

5.214 Definitions.

In addition to the definitions in 5.100, the following definitions apply to this subpart B:

Assistance applicant. Except as excluded pursuant to 42 U.S.C. 3543(b) and 3544(a)(2), this term means the following:

(1) For any program under 24 CFR parts 215, 221, 236, 290, or 891, or any program under Section 8 of the 1937 Act: A family or individual that seeks rental assistance under the program.

(2) For the public housing program: A family or individual that seeks admission to the program.

(3) For any program under 24 CFR part 235: A homeowner or cooperative member seeking homeownership assistance (including where the individual seeks to assume an existing mortgage).

Computer match means the automated comparison of data bases containing records about individuals.

Computer matching agreement means the agreement that describes the responsibilities and obligations of the parties participating in a computer match.

Consent form means any consent form approved by HUD to be signed by assistance applicants and participants for the purpose of obtaining income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and payments of retirement income), as referenced at 26 U.S.C. 6103(l)(7)(A); and return information for unearned income from the Internal Revenue Service, as referenced at 26 U.S.C. 6103(l)(7)(B). The consent forms expire after a certain time and may authorize the collection of other information from assistance applicants or participants to determine eligibility or level of benefits as provided in 813.109, 913.109, and 950.315 of this title.

Employer Identification Number (EIN) means the nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation pursuant to sections 6011(b), or corresponding provisions of prior law, or 6109 of the Internal Revenue Code.

Entity applicant. (1) Except as excluded pursuant to 42 U.S.C. 3543(b), 3544(a)(2), and paragraph (2) of this definition, this term means a partnership, corporation, or any other association or entity, other than an individual owner applicant, that seeks to participate as a private owner in any of the following: (i) The project-based assistance programs under Section 8 of the 1937 Act; (ii) The programs in 24 CFR parts 215, 221, or 236; or (iii) The other mortgage and loan insurance programs in 24 CFR parts 201 through 267, except that the

term 'entity applicant' does not include a mortgagee or lender. (2) The term does not include a public entity, such as a PHA, IHA, or State Housing Finance Agency.

Federal agency means a department of the executive branch of the Federal Government.

Income information means information relating to an individual's income, including:

(1) All employment income information known to current or previous employers or other income sources that HUD or the processing entity determines is necessary for purposes of determining an assistance applicant's or participant's eligibility for, or level of assistance in, a covered program;

(2) All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law;

(3) With respect to unemployment compensation:

(i) Whether an individual is receiving, has received, or has applied for unemployment compensation;

(ii) The amount of unemployment compensation the individual is receiving or is entitled to receive; and

(iii) The period with respect to which the individual actually received such compensation;

(4) Unearned IRS income and self-employment, wages and retirement income as described in the Internal Revenue Code, 26 U.S.C. 6103(l)(7); and

(5) Wage, social security (Title II), and supplemental security income (Title XVI) data obtained from the Social Security Administration.

Individual owner applicant. Except as excluded pursuant to 42 U.S.C. 3543(b), 3544(a)(2), or paragraph (2) of this definition, this term means:

(1) An individual who seeks to participate as a private owner in any of:

(i) The project-based assistance programs under Section 8 of the 1937 Act; or

(ii) The programs in 24 CFR parts 215, 221, 235 (without homeownership assistance), or 236, including where the individual seeks to assume an existing mortgage; or

(2) An individual who:

(i) Either: (A) Applies for a mortgage or loan insured or coinsured under any of the programs referred to in paragraph (1)(iii) of the definition of 'entity applicant' in this section; or

(B) Seeks to assume an existing mortgage or loan; and

(ii) Intends to hold the mortgaged property in his or her individual right.

IRS means the Internal Revenue Service.

Owner means the person or entity (or employee of an owner) that leases an assisted dwelling unit to an eligible family and includes, when applicable, a mortgagee.

Participant. Except as excluded pursuant to 42 U.S.C. 3543(b) and 3544(a)(2), this term has the following meaning:

(1) For any program under 24 CFR Part 891, or Section 8 of the 1937 Act: A family receiving rental assistance under the program;

(2) For the public housing program: A family or individual that is assisted under the program;

(3) For 24 CFR parts 215, 221, 236, and 290: A tenant or qualified tenant under any of the programs; and

(4) For 24 CFR part 235: A homeowner or a cooperative member receiving homeownership assistance.

Processing entity means the person or entity that, under any of the programs covered under this subpart B, is responsible for making eligibility and related determinations and an income reexamination. (In the Section 8 and public housing programs, the 'processing entity' is the ‘responsible entity’ as defined in 5.100.)

Social Security Number (SSN) means the nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

SSA means the Social Security Administration.

State Wage Information Collection Agency (SWICA) means the State agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the State, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

Disclosure And Verification Of Social Security Numbers And Employer Identification Numbers For Applicants And Participants In Certain HUD Programs

5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *General*. The requirements of this section apply to applicants and participants as described in this section, except that this section is inapplicable to individuals who do not contend eligible immigration status under subpart E of this part (see §5.508).

(b) *Disclosure required of assistance applicants*. Each assistance applicant must submit the following information to the processing entity when the assistance applicant’s eligibility under the program involved is being determined.

(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant’s household; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(c) *Disclosure required of individual owner applicants*. Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant’s eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the individual owner applicant and to each member of the individual owner applicant’s household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(d) *Disclosure required of certain officials of entity applicants*. Each officer, director, principal stockholder, or other official of an entity applicant must submit the following information to the processing entity when the entity applicant’s eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each SSN.

(e) *Disclosure required of participants*—(1) *Initial disclosure*. (i) Each participant, except those age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, must submit the information described in paragraph (e)(1)(ii) of this section, if the participant has:

(A) Not previously disclosed a SSN;

(B) Previously disclosed a SSN that HUD or the SSA determined was invalid; or

(C) Been issued a new SSN.

(ii) Each participant subject to the disclosure requirements under paragraph (e)(1)(i) of this section must submit the following information to the processing entity at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification for the program involved:

(A) The complete and accurate SSN assigned to the participant and to each member of the participant’s household; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

(2) *Subsequent disclosure*. Once a participant has disclosed and the processing entity has verified each SSN, the following rules apply:

(i) *Addition of new household member who is at least 6 years of age or under the age of 6 and has an assigned SSN*. When the participant requests to add a new household member who is at least 6 years of age, or is under the age of 6 and has an assigned SSN, the participant must provide the following to the processing entity at the time of the request, or at the time of processing the interim reexamination or recertification of family composition that includes the new member(s):

(A) The complete and accurate SSN assigned to each new member; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new member.

(ii) *Addition of new household member who is under the age of 6 and has no assigned SSN.* (A) When a participant requests to add a new household member who is under the age of 6 and has not been assigned a SSN, the participant shall be required to provide the complete and accurate SSN assigned to each new child and the documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new child within 90 calendar days of the child being added to the household.

(B) The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the participant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant. During the period that the processing entity is awaiting documentation of a SSN, the processing entity shall include the child as part of the assisted household and the child shall be entitled to all the benefits of being a household member. If, upon expiration of the provided time period, the participant fails to produce a SSN, the processing entity shall follow the provisions of §5.218.

(iii) *Assignment of new SSN*. If the participant or any member of the participant's household has been assigned a new SSN, the participant must submit the following to the processing entity at either the time of receipt of the new SSN; at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification; or at such earlier time specified by the processing entity:

(A) The complete and accurate SSN assigned to the participant or household member involved; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN of each individual.

(f) *Disclosure required of entity applicants*. Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) Any complete and accurate EIN assigned to the entity applicant; and

(2) The documentation referred to in paragraph (g)(2) of this section to verify the EIN.

(g) *Required documentation*—(1) *SSN*. The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (e) of this section is:

(i) A valid SSN card issued by the SSA;

(ii) An original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual, along with other identifying information of the individual; or

(iii) Such other evidence of the SSN as HUD may prescribe in administrative instructions.

(2) *EIN*. The documentation necessary to verify an EIN of an entity applicant that is required to disclose its EIN under paragraph (f) of this section is the official, written communication from the Internal Revenue Service (IRS) assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(h) *Effect on assistance applicants*. (1) Except as provided in paragraphs (h)(2) and (3) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation referred to in paragraph (g)(1) of this section to verify the SSN of each member of the household.

(2) For applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals under 24 CFR part 882, subpart H, the documentation required in paragraph (g)(1) of this section must be provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the applicant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the applicant. If, upon expiration of the provided time period, the individual fails to produce a SSN, the processing entity shall follow the provisions of §5.218.

(3) If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission (or, for the HCV program, the date of voucher issuance), the assistance applicant may become a participant, so long as the documentation required in paragraph (g)(1) of this section is provided to the processing entity within 90 calendar days from the date of admission into the program (or, for the HCV program, the effective date of the Housing Assistance Payment contract). The processing entity must grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required in paragraph (g)(1) of this section within the required time period, the processing entity must follow the provisions of §5.218.

(i) *Rejection of documentation*. The processing entity must not reject documentation referred to in paragraph (g) of this section, except as HUD may otherwise prescribe through publicly issued notice.

5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility of assistance applicants and individual owner applicants*. The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in §5.216.

(b) *Denial of eligibility of entity applicants*. The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

(1) The entity applicant does not meet the EIN disclosure, documentation, and verification requirements specified in §5.216; or

(2) Any of the officials of the entity applicant referred to in §5.216(d) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in §5.216.

(c) *Termination of assistance or termination of tenancy of participants*. (1) The processing entity must terminate the assistance or terminate the tenancy, or both, of a participant and the participant's household, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation, and verification requirements specified in §5.216.

(2) The processing entity may defer termination and provide the participant with an additional 90 calendar days to disclose a SSN, but only if the processing entity, in its discretion, determines that:

(i) The failure to meet these requirements was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant; and

(ii) There is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline.

(3) Failure of the participant to disclose a SSN by the deadline specified in paragraph (c)(2) of this section will result in termination of the assistance or tenancy, or both, of the participant and the participant's household.

(d) Cross reference. Individuals should consult the regulations and administrative instructions for the programs covered under this subpart B for further information on the use of SSNs and EINs in determinations regarding eligibility.

Procedures for Obtaining Income Information About Applicants and Participants

5.230 Consent by assistance applicants and participants.

(a) Required consent by assistance applicants and participants. Each member of the family of an assistance applicant or participant who is at least 18 years of age, and each family head and spouse regardless of age, shall sign one or more consent forms.

(b) Consent authorization. (1) To whom and when. The assistance applicant shall submit the signed consent forms to the processing entity when eligibility under a covered program is being determined. A participant shall sign and submit consent forms at the next regularly scheduled income reexamination. Assistance applicants and participants shall be responsible for the signing and submitting of consent forms by each applicable family member.

(2) Subsequent consent forms–special cases. Participants are required to sign and submit consent forms at the next interim or regularly scheduled income reexamination under the following circumstances:

(i) When any person 18 years or older becomes a member of the family;

(ii) When a member of the family turns 18 years of age; and

(iii) As required by HUD or the PHA in administrative instructions.

(c) Consent form–contents. The consent form required by this section shall contain, at a minimum, the following:

(1) A provision authorizing HUD and PHAs to obtain from SWICAs any information or materials necessary to complete or verify the application for participation and to maintain continued assistance under a covered program; and

(2) A provision authorizing HUD, PHAs, or the owner responsible for determining eligibility for or the level of assistance to verify with previous or current employers income information pertinent to the assistance applicant's or participant's eligibility for or level of assistance under a covered program;

(3) A provision authorizing HUD to request income return information from the IRS and the SSA for the sole purpose of verifying income information pertinent to the assistance applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the date the consent form is signed.

5.232 Penalties for failing to sign consent forms.

(a) Denial or termination of benefits. In accordance with the provisions governing the program involved, if the assistance applicant or participant, or any member of the assistance applicant's or participant's family, does not sign and submit the consent form as required in 5.230, then:

(1) The processing entity shall deny assistance to and admission of an assistance applicant;

(2) Assistance to, and the tenancy of, a participant may be terminated.

(b) Cross references. Individuals should consult the regulations and administrative instructions for the programs covered under this subpart B for further information on the use of income information in determinations regarding eligibility.

5.233 Mandated use of HUD's Enterprise Income Verification (EIV) System.

(a) *Programs subject to this section and requirements*. (1) The requirements of this section apply to entities administering assistance under the:

(i) Public Housing program under 24 CFR part 960;

(ii) Section 8 Housing Choice Voucher (HCV) program under 24 CFR part 982;

(iii) Moderate Rehabilitation program under 24 CFR part 882;

(iv) Project-based Voucher program under 24 CFR part 983;

(v) Project-based Section 8 programs under 24 CFR parts 880, 881, 883, 884, 886, and 891;

(vi) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(vii) Section 811 of the Cranston- Gonzalez National Affordable Housing Act (42 U.S.C. 8013);

(viii) Sections 221(d)(3) and 236 of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715z–1); and

(ix) Rent Supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(2) Processing entities must use HUD's EIV system in its entirety: (i) As a third party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income, in accordance with §5.236, and administrative guidance issued by HUD; and

(ii) To reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

(b) *Penalties for noncompliance*. Failure to use the EIV system in its entirety may result in the imposition of sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculations, or both.

5.234 Requests for information from SWICAs and Federal agencies; restrictions on use.

(a) Information available from SWICAs and Federal agencies–to whom and what. Income information will generally be obtained through computer matching agreements between HUD and a SWICA or Federal agency, or between a PHA and a SWICA, as described in paragraph (c) of this section. Certification that the applicable assistance applicants and participants have signed appropriate consent forms and have received the necessary Privacy Act notice is required, as follows:

(1) When HUD requests the computer match, the processing entity shall certify to HUD; and

(2) When the PHA requests the computer match, the PHA shall certify to the SWICA.

(b) Restrictions on use of information. The restrictions of 42 U.S.C. 3544(c)(2)(A) apply to the use by HUD or a PHA of income information obtained from a SWICA. The restrictions of 42 U.S.C. 3544(c)(2)(A) and of 26 U.S.C. 6103(l)(7) apply to the use by HUD or a PHA of income information obtained from the IRS or SSA.

(c) Computer matching agreements. Computer matching agreements shall specify the purpose and the legal authority for the match, and shall include a description of the records to be matched, a statement regarding disposition of information generated through the match, a description of the administrative and technical safeguards to be used in protecting the information obtained through the match, a description of the use of records, the restrictions on duplication and redisclosure, a certification, and the amount that will be charged for processing a request.

5.236 Procedures for termination, denial, suspension, or reduction of assistance based on information obtained from a SWICA or Federal agency.

(a) Termination, denial, suspension, or reduction of assistance. The provisions of 42 U.S.C. 3544(c)(2)(B) and (C) shall govern the termination, denial, suspension, or reduction of benefits for an assistance applicant or participant based on income information obtained from a SWICA or a Federal agency. Procedures necessary to comply with these provisions are provided in paragraph (b) of this section.

(b) Procedures for independent verification. (1) Any determination or redetermination of family income verified in accordance with this paragraph must be carried out in accordance with the requirements and procedures applicable to the individual covered program. Independent verification of information obtained from a SWICA or a Federal agency may be:

(i) By HUD;

(ii) In the case of the public housing program, by a PHA; or

(iii) In the case of any Section 8 program, by a PHA acting as contract administrator under an ACC.

(2) Upon receiving income information from a SWICA or a Federal agency, HUD or, when applicable, the PHA shall compare the information with the information about a family's income that was:

(i) Provided by the assistance applicant or participant to the PHA; or

(ii) Obtained by the owner (or mortgagee, as applicable) from the assistance applicant or participant or from his or her employer.

(3) When the income information reveals an employer or other income source that was not disclosed by the assistance applicant or participant, or when the income information differs substantially from the information received from the assistance applicant or participant or from his or her employer:

(i) HUD or, as applicable or directed by HUD, the PHA shall request the undisclosed employer or other income source to furnish any information necessary to establish an assistance applicant's or participant's eligibility for or level of assistance in a covered program. This information shall be furnished in writing, as directed to:

(A) HUD, with respect to programs under parts 221, 235, 236, or 290 of this title;

(B) The responsible entity (as defined in 5.100) in the case of the public housing program or any Section 8 program.

(C) The owner or mortgagee, as applicable, with respect to the rent supplement, Section 221(d)(3) BMIR, Section 235 homeownership assistance, or Section 236 programs.

(ii) HUD or the PHA may verify the income information directly with an assistance applicant or participant. Such verification procedures shall not include any disclosure of income information prohibited under paragraph (b)(6) of this section.

(4) HUD and the PHA shall not be required to pursue these verification procedures when the sums of money at issue are too small to raise an inference of fraud or justify the expense of independent verification and the procedures related to termination, denial, suspension, or reduction of assistance.

(5) Based on the income information received from a SWICA or Federal agency, HUD or the PHA, as appropriate, may inform an owner (or mortgagee) that an assistance applicant's or participant's eligibility for or level of assistance is uncertain and needs to be verified. The owner (or mortgagee) shall then confirm the assistance applicant's or participant's income information by checking the accuracy of the information with the employer or other income source, or directly with the family.

(6) Nondisclosure of Income information. Neither HUD nor the PHA may disclose income information obtained from a SWICA directly to an owner (unless a PHA is the owner). Disclosure of income information obtained from the SSA or IRS is restricted under 26 U.S.C. 6103(l)(7) and 42 U.S.C. 3544.

(c) Opportunity to contest. HUD, the PHA, or the owner (or mortgagee, as applicable) shall promptly notify any assistance applicant or participant in writing of any adverse findings made on the basis of the information verified in accordance with paragraph (b) of this section. The assistance applicant or participant may contest the findings in the same manner as applies to other information and findings relating to eligibility factors under the applicable program. Termination, denial, suspension, or reduction of assistance shall be carried out in accordance with requirements and procedures applicable to the individual covered program, and shall not occur until the expiration of any notice period provided by the statute or regulations governing the program.

5.238 Criminal and civil penalties.

Persons who violate the provisions of 42 U.S.C. 3544 or 26 U.S.C. 6103(l)(7) with respect to the use and disclosure of income information may be subject to civil or criminal penalties under 42 U.S.C. 3544(c)(3), 26 U.S.C. 7213(a), or 18 U.S.C. 1905.

5.240 Family disclosure of income information to the responsible entity and verification.

(a) This section applies to families that reside in dwelling units with assistance under the public housing program, the Section 8 tenant-based assistance programs, or for which project-based assistance is provided under the Section 8, Section 202, or Section 811 program.

(b) The family must promptly furnish to the responsible entity any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income.

(c) The responsible entity must verify the accuracy of the income information received from the family, and change the amount of the total tenant payment, tenant rent or Section 8 housing assistance payment, or terminate assistance, as appropriate, based on such information.

Subpart D Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

5.400 Applicability.

This part applies to public housing and Section 8 programs.

5.403 Definitions.

Annual contributions contract (ACC) means the written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

Applicant means a person or a family that has applied for housing assistance.

Disabled family means a family whose head (including cohead), spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

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

Elderly family means a family whose head (including cohead), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) Is determined to be essential to the care and well-being of the persons; (2) Is not obligated for the support of the persons; and (3) Would not be living in the unit except to provide the necessary supportive services.

Near-elderly family means a family whose head (including cohead), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

Person with disabilities: (1) Means a person who: (i) Has a disability, as defined in 42 U.S.C. 423; (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that: (A) Is expected to be of long-continued and indefinite duration; (B) Substantially impedes his or her ability to live independently, and (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or (iii) Has a developmental disability as defined in 42 U.S.C. 6001. (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and (4) Means 'individual with handicaps', as defined in 8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

Subpart E Restrictions on Assistance to Noncitizens

5.500 Applicability.

(a) Covered programs/assistance. This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart E is applicable to financial assistance provided under:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and

(4) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) which covers:

(i) HUD's Public Housing Programs;

(ii) The Section 8 Housing Assistance Programs; and

(iii) The Housing Development Grant Programs (with respect to low income units only).

(b) Covered individuals and entities. (1) Covered individuals/ persons and families. The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.

(2) Covered entities. The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing) owners, and mortgagees under the Section 235 Program. The term 'responsible entity' is used in this subpart E to refer collectively to these entities, and is further defined in 5.504.

5.502 Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

5.504 Definitions.

(a) The definitions '1937 Act', 'HUD', 'Public Housing Agency (PHA)', and 'Section 8' are defined in subpart A of this part.

(b) As used in this subpart E:

Child means a member of the family other than the family head or spouse who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See 5.508(b).)

Family has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing covered programs means the following programs administered by the Assistant Secretary for Housing: (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program); (2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).

INS means the U.S. Immigration and Naturalization Service.[1]

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of 'Section 8 Covered Programs' in this section.)

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigrations status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows: (1) For the Section 235 Program, the mortgagee. (2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD. (3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 5.500.

Tenant means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

5.506 General provisions.

(a) Restrictions on assistance. Financial assistance under a Section 214 covered program is restricted to:

(1) Citizens; or

(2) Noncitizens who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) Family eligibility for assistance. (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in paragraph (b)(2) of this section.

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in 5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in 5.516 and 5.518.

(c) *Preferences.* Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

5.508 Submission of evidence of citizenship or eligible immigration status.

(a) General. Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of 5.516 and 5.518 shall apply.

(b) Evidence of citizenship or eligible immigration status. Each family member, regardless of age, must submit the following evidence to the responsible entity.

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) One of the INS documents referred to in 5.510; and

(iii) A signed verification consent form.

(c) Declaration. (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) For Housing covered programs: The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) Verification consent form. (1) Who signs. Each noncitizen who declares eligible immigration status (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) Notice of release of evidence by responsible entity. The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) Notice of release of evidence by HUD. The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) Individuals who do not contend that they have eligible status. If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under5.516 and 5.518, or 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) Notification of requirements of Section 214. (1) When notice is to be issued. Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) Applicant's notice. The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) Notice to tenants. The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the responsible entity's notice of regular reexamination of income, but not later than one year following June 19, 1995.

(iii) Timing of mortgagor's notice. A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section and any additional requirements imposed under the Section 235 Program.

(2) Form and content of notice. The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see 5.514 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of 5.516 and 5.518.

*(g) When evidence of eligible status is required to be submitte*d. The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) Applicants. For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see 5.512(a)).

(2) Tenants. For tenants, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) New occupants of assisted units. For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) Changing participation in a HUD program. Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) One-time evidence requirement for continuous occupancy. For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

(h) Extensions of time to submit evidence of eligible status. (1) When extension must be granted. The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under 5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) Thirty-day extension period. Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) Grant or denial of extension to be in writing. The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

5.510 Documents of eligible immigration status.

(a) General. A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) Acceptable evidence of eligible immigration status. Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in 5.506(a) for the specific immigration status claimed by the individual.

5.512 Verification of eligible immigration status.

(a) General. Except as described in paragraph (b) of this section and 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with 5.508.

(b) PHA election to provide assistance before verification. A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

(c) Primary verification. (1) Automated verification system. Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) Failure of primary verification to confirm eligible immigration status. If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(d) Secondary verification. (1) Manual search of INS records. Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a Section 214 covered program.

(2) Secondary verification initiated by responsible entity. Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents required for the immigration status declared (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) Failure of secondary verification to confirm eligible immigration status. If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in 5.514(d), which includes notification of the right to appeal to the INS of the INS finding on immigration status (see 5.514(d)(4)).

(e) Exemption from liability for INS verification. The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

5.514 Delay, denial, reduction or termination of assistance.

(a) General. Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.

(b) Restrictions on delay, denial, reduction or termination of assistance. (1) Restrictions on reduction, denial or termination of assistance for applicants and tenants. Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with 5.520; or

(vi) Assistance for a mixed family is continued in accordance with 5.516 and 5.518; or

(vii) Deferral of termination of assistance is granted in accordance with 5.516 and 5.518.

(2) Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants. In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) Events causing denial or termination of assistance. (1) General. Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in 5.508(g) or by the expiration of any extension granted in accordance with 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

(2) Termination of assisted occupancy. For termination of assisted occupancy, see paragraph (i) of this section.

(d) Notice of denial or termination of assistance. The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under 5.520;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in 5.514 and 5.518;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) Appeal to the INS. (1) Submission of request for appeal. Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

(2) Documentation to be submitted as part of appeal to INS. The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) Decision by INS. (i) When decision will be issued. The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and responsible entity of the reasons for the delay.

(ii) Notification of INS decision and of informal hearing procedures. When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS. Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) Informal hearing. (1) When request for hearing is to be made. After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

(2) Informal hearing procedures. (i) Tenants assisted under a Section 8 covered program: For tenants assisted under a Section 8 covered program, the procedures for the hearing before the responsible entity are set forth in:

(A) For Section 8 Moderate Rehabilitation assistance: 24 CFR part 882;

(B) For Section 8 tenant-based assistance: 24 CFR part 982; or

(C) For Section 8 project-based certificate program: 24 CFR part 983.

(ii) Tenants assisted under any other Section 8 covered program or a Public Housing covered program: For tenants assisted under a Section 8 covered program not listed in paragraph (f)(3)(i) of this section or a Public Housing covered program, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(iii) Families under Housing covered programs and applicants for assistance under all covered programs. For all families under Housing covered programs (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows:

(A) Hearing before an impartial individual. The family shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) Examination of evidence. The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) Presentation of evidence and arguments in support of eligible status. The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) Controverting evidence of the responsible entity. The family shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) Representation. The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(F) Interpretive services. The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or responsible entity, as may be agreed upon by the two parties to the proceeding; and

(G) Hearing to be recorded. The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the responsible entity).

(3) Hearing decision. The responsible entity shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) Judicial relief. A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) Retention of documents. The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income reexamination;
(3) Photocopies of any original documents (front and back), including original INS documents;
(4) The signed verification consent form;
(5) The INS verification results;
(6) The request for an INS appeal;
(7) The final INS determination;
(8) The request for an informal hearing; and
(9) The final informal hearing decision.
(i) Termination of assisted occupancy.
(1) Under Housing covered programs, and in the Section 8 covered programs other than the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:
(i) If permitted under the lease, the responsible entity notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.
(ii) The responsible entity and tenant entering into a new lease without financial assistance.
(iii) The responsible entity evicting the tenant. While the tenant continues in occupancy of the unit, the responsible entity may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the responsible entity to terminate the tenancy and to evict the tenant must be in accordance with applicable HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.
(2) In the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The PHA shall not make any additional assistance payments to the owner after the required procedures specified in this section have been completed. In addition, the PPHA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

5.516 Availability of preservation assistance to mixed families and other families.

(a) Assistance available for tenant mixed families. (1) General. Preservation assistance is available to tenant mixed families, following completion of the appeals and informal hearing procedures provided in5.514. There are three types of preservation assistance:
(i) Continued assistance (see paragraph (a) of 5.518);
(ii) Temporary deferral of termination of assistance (see paragraph (b) of 5.518); or
(iii) Prorated assistance (see 5.520, a mixed family must be provided prorated assistance if the family so requests).
(2) Availability of assistance.
(i) For Housing covered programs: One of the three types of assistance described is available to tenant mixed families assisted under a National Housing Act or 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a mixed family that meets the conditions for eligibility for continued assistance.
(ii) For Section 8 or Public Housing covered programs. One of the three types of assistance described may be available to tenant mixed families assisted under a Section 8 or Public Housing covered program.
(b) Assistance available for applicant mixed families. Prorated assistance is also available for mixed families applying for assistance as provided in 5.520.
(c) Assistance available to other families in occupancy. Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (c)(1) and (2) of this section.
(1) For Housing covered programs: Temporary deferral of termination of assistance is available to families assisted under a Housing covered program.
(2) For Section 8 or Public Housing covered programs: The responsible entity may make temporary deferral of termination of assistance to families assisted under a Section 8 or Public Housing covered program.
(d) Section 8 covered programs: Discretion afforded to provide certain family preservation assistance.
(1) Project owners. With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance to a family. However, project owners and PHAs must offer prorated assistance to eligible mixed families.
(2) PHAs. The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth in paragraphs (a) and (b) of 5.518. However, the PHA must offer prorated assistance to eligible families.

5.518 Types of preservation assistance available to mixed families and other families.

(a) Continued assistance. (1) General. A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):
(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;
(ii) The family's head of household or spouse has eligible immigration status as described in 5.506; and
(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.
(2) Proration of continued assistance. A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in 5.520.
(b) Temporary deferral of termination of assistance. (1) Eligibility for this type of assistance. If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) Housing covered programs: Conditions for granting temporary deferral of termination of assistance. The responsible entity shall grant a temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing covered program and one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) Time limit on deferral period. If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

(4) Notification requirements for beginning of each deferral period. At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) Determination of availability of affordable housing at end of each deferral period.

(i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section. Specifically, the responsible entity must:

(A) For Housing covered programs: Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) For Section 8 or Public Housing covered programs: Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

(c) Option to select proration of assistance at end of deferral period. A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the responsible entity shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(d) Notification of decision on family preservation assistance. A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

5.520 Proration of assistance.

(a) Applicability. This section applies to a mixed family other than a family receiving continued assistance, or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.

(b) Method of prorating assistance for Housing covered programs.

(1) Proration under Rent Supplement Program. If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) Proration under Section 235 Program. If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) Proration under Section 236 Program without the benefit of additional assistance. If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) Proration under Section 236 Program with the benefit of additional assistance. If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(c) Method of prorating assistance for Section 8 covered programs.

(1) *Section 8 assistance other than assistance provided for a tenancy under the Section 8 Housing Choice Voucher Program.* For Section 8 assistance other than assistance for a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

(i) *Step 1*. Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) *Step 2*. Determine total tenant payment in accordance with section 5.613(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iii) *Step 3*. Subtract amount determined in paragraph (c)(1)(ii), (Step 2), from amount determined in paragraph (c)(1)(i), (Step 1).

(iv) *Step 4*. Multiply the amount determined in paragraph (c)(1)(iii), (Step 3) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) Prorated housing assistance. The amount determined in paragraph (c)(1)(iv)(Step 4) is the prorated housing assistance payment for a mixed family.

(vi) No effect on contract rent. Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Assistance for a Section 8 voucher tenancy.* For a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration housing assistance payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in paragraph (c)(2)(i)(Step 1) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) Prorated housing assistance. The amount determined in paragraph (c)(2)(ii)(Step 2) is the prorated housing assistance payment for a mixed family.

(iv) No effect on rent to owner. Proration of the housing assistance payment does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

(d) *Method of prorating assistance for Public Housing covered programs.* (1) The PHA must prorate the family's assistance as follows:

(i) *Step 1.* Determine the total tenant payment in accordance with section 5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Subtract the total tenant payment from the PHA-established flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Divide the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy."

(iv) *Step 4.* Multiply the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(2) The product of steps 1 through 4 of paragraphs (d)(1)(i) through (iv) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the PHA- established flat rent minus the amount of the eligible subsidy.

(e) *Method of prorating assistance when the mixed family's total tenant payment (TTP) is greater than the public housing flat rent.* When the mixed family's TTP is greater than the flat rent, the PHA must use the TTP as the mixed family TTP. The PHA subtracts from the mixed family TTP any established utility allowance, and the sum becomes the mixed family rent.

5.522 Prohibition of assistance to noncitizen students.

(a) General. The provisions of 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) Family of noncitizen students. (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

5.524 Compliance with nondiscrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations in 24 CFR part 100.

5.526 Protection From liability for responsible entities and State and local government agencies and officials.

(a) Protection from liability for responsible entities. Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) Protection from liability for State and local government agencies and officials. State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

5.528 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented eligible status, the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

Subpart F Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

5.601 Purpose and applicability.

This subpart states HUD requirements on the following subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences; and

(3) Owner reexamination of family income and composition;

(d) Determining adjusted income, as provided in § 5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); Section 202 Supportive Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E) and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable to these programs; and

(e) Determining earned income disregard for persons with disabilities, as provided in § 5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

5.603 Definitions.

As used in this subpart:

(a) Terms found elsewhere in part 5.

(1) Subpart A. The terms *1937 Act, elderly person, public housing, public housing agency (PHA), responsible entity* and *Section 8* are defined in §5.100.

(2) Subpart D. The terms 'disabled family', 'elderly family', 'family', 'live-in aide', and 'person with disabilities' are defined in 5.403.

(b) The following terms shall have the meanings set forth below:

Adjusted income. See 5.611.

Annual income. See 5.609.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Economic self-sufficiency program. Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

Extremely low income family. A very low-income family whose annual income does not exceed the higher of:

(1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or

(2) Thirty (30) percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Full-time student. A person who is attending school or vocational training on a full-time basis.

Imputed welfare income. See 5.615.

Low income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Net family assets. (1)Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under 5.609, the term 'net family assets' does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term 'owner' shall also include a 'borrower' as defined in part 891 of this title.

Responsible entity. For § 5.611, in addition to the definition of *responsible entity* in § 5.100, and for § 5.617, in addition to only that part of the definition of *responsible entity* in § 5.100 which addresses the Section 8 program covered by § 5.617 (public housing is not covered by § 5.617), *responsible entity* means:

(1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

(2) For the Rent Supplement Payments Program, the owner of the multifamily project;

(3) For the Rental Assistance Payments Program, the owner of the Section 236 project;

(4) For the Housing Opportunities for Persons with AIDS (HOPWA) program, the applicable “State” or “unit of general local government” or “nonprofit organization” as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;

(5) For the Shelter Plus Care Program, the “Recipient” as defined in 24 CFR 582.5;

(6) For the Supportive Housing Program, the "recipient" as defined in 24 CFR 583.5;

(7) For the Section 202 Supportive Housing Program for the Elderly, the "Owner" as defined in 24 CFR 891.205;

(8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the "Borrower" as defined in 24 CFR 891.505; and

(9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the "owner" as defined in 24 CFR 891.305.

Tenant rent. The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

Total tenant payment. See 5.628.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

Very low income family. A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).

Work activities. See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

Family Income

5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and

(B) are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition and any other required fees and charges, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in 5.403;

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) Annualization of income. If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity, defined in § 5.100 and § 5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions

(a) *Mandatory deductions.* In determining adjusted income, the responsible entity must deduct the following amounts from annual income:

(1) $480 for each dependent;

(2) $400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Additional deductions.*

(1) For public housing, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

(2) For the HUD programs listed in § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

5.612 Restrictions on assistance to students enrolled in an institution of higher education.

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

(a) Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(b) Is under 24 years of age;

(c) Is not a veteran of the United States military;

(d) Is unmarried;

(e) Does not have a dependent child;

(f) Is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was not receiving assistance under section 8 of the 1937 Act as of November 30, 2005; and

(g) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.

(a) This section applies to the public housing program and the Section 8 tenant-based assistance program.

(b) The PHA must make best efforts to enter into cooperation agreements with welfare agencies under which such agencies agree:

(1) To target public assistance, benefits and services to families receiving assistance in the public housing program and the Section 8 tenant-based assistance program to achieve self-sufficiency;

(2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in these housing assistance programs.

5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ('welfare benefits') from a State or other public agency ('welfare agency') under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction. (1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) 'Specified welfare benefit reduction' does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income. (1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income is reduced to zero.

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision. (1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) PHA relation with welfare agency. (1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) *Applicable programs.* The disallowance of earned income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) *Definitions.* The following definitions apply for purposes of this section.

Baseline income. The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person with disabilities (who is a member of a qualified family).

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section:

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social

Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance–provided that the total amount over a six-month period is at least $500.

(c) *Disallowance of increase in annual income.* (1) *Initial twelve month exclusion.* During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second 12-month exclusion and phase-in.* Upon the expiration of the 12-month period defined in paragraph (c)(1) of this section and for the subsequent 12-month period, the responsible entity must exclude from annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) of this section is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (c)(1) of this section and a maximum of 12 months for disallowance under paragraph (c)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (c)(1) of this section.

(4) *Effect of changes on currently participating families.* Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date (see 24 CFR parts 0 to 199, revised as of April 1, 2016).

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

Family Payment

5.628 Total tenant payment.

(a) Determining total tenant payment (TTP). Total tenant payment is the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of the family's monthly adjusted income;

(2) 10 percent of the family's monthly income;

(3) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated; or

(4) The minimum rent, as determined in accordance with 5.630.

(b) Determining TTP if family's welfare assistance is ratably reduced. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section is the amount resulting from one application of the percentage.

5.630 Minimum rent.

(a) Minimum rent. (1) The PHA must charge a family no less than a minimum monthly rent established by the responsible entity, except as described in paragraph (b) of this section.

(2) For the public housing program and the section 8 moderate rehabilitation, and certificate or voucher programs, the PHA may establish a minimum rent of up to $50.

(3) For other section 8 programs, the minimum rent is $25.

(b) Financial hardship exemption from minimum rent. (1) When is family exempt from minimum rent? The responsible entity must grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes these situations:

(i) When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996;

(ii) When the family would be evicted because it is unable to pay the minimum rent;

(iii) When the income of the family has decreased because of changed circumstances, including loss of employment;

(iv) When a death has occurred in the family; and

(v) Other circumstances determined by the responsible entity or HUD.

(2) What happens if family requests a hardship exemption?

(i) Public housing.

(A) If a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption, and continuing until the PHA determines whether there is a qualifying financial hardship and whether it is temporary or long term.

(B) The PHA must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) The PHA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

(D) If the PHA determines that a qualifying financial hardship is temporary, the PHA must reinstate the minimum rent from the beginning of the suspension of the minimum rent. The PHA must offer the family a reasonable repayment agreement, on terms and conditions established by the PHA, for the amount of back minimum rent owed by the family.

(ii) All section 8 programs.

(A) If a family requests a financial hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption until the responsible entity determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long term.

(B) The responsible entity must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) If the responsible entity determines that a qualifying financial hardship is temporary, the PHA must not impose the minimum rent during the 90-day period beginning the month following the date of the family's request for a hardship exemption. At the end of the 90-day suspension period, the responsible entity must reinstate the minimum rent from the beginning of the suspension. The family must be offered a reasonable repayment agreement, on terms and conditions established by the responsible entity, for the amount of back rent owed by the family.

(iii) All programs.

(A) If the responsible entity determines there is no qualifying financial hardship exemption, the responsible entity must reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family must pay the back rent on terms and conditions established by the responsible entity.

(B) If the responsible entity determines a qualifying financial hardship is long term, the responsible entity must exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.

(C) The financial hardship exemption only applies to payment of the minimum rent (as determined pursuant to 5.628(a)(4) and 5.630), and not to the other elements used to calculate the total tenant payment (as determined pursuant to 5.628(a)(1), (a)(2) and (a)(3)).

(3) Public housing: Grievance hearing concerning PHA denial of request for hardship exemption. If a public housing family requests a hearing under the PHA grievance procedure, to review the PHA's determination denying or limiting the family's claim to a financial hardship exemption, the family is not required to pay any escrow deposit in order to obtain a grievance hearing on such issues.

5.632 Utility reimbursements.

(a) Applicability. This section is applicable to:

(1) The Section 8 programs other than the Section 8 voucher program (for distribution of a voucher housing assistance payment that exceeds rent to owner, see 982.514(b) of this title);

(2) A public housing family paying an income-based rent (see 960.253 of this title). (Utility reimbursement is not paid for a public housing family that is paying a flat rent.)

(b) Payment of utility reimbursement. (1) The responsible entity pays a utility reimbursement if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment. The responsible entity has the option of making utility reimbursement payments not less than once per1 calendar-year quarter, for reimbursements totaling $45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the responsible entity must reimburse the family for a prorated share of the applicable reimbursement. PHAs and owners exercising this option must have a hardship policy in place for tenants.

(2) In the public housing program (where the family is paying an income-based rent), the Section 8 moderate rehabilitation program and the Section 8 certificate or voucher program, the PHA may pay the utility reimbursement either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount paid to the utility supplier.

(3) In the other Section 8 programs, the owner must pay the utility reimbursement either:

(i) To the family, or

(ii) With consent of the family, to the utility supplier to pay the utility bill on behalf of the family.

5.634 Tenant rent.

(a) Section 8 programs. For Section 8 programs other than the Section 8 voucher program, tenant rent is total tenant payment minus any utility allowance.

(b) Public housing. See 960.253 of this title for the determination of tenant rent.

Section 8 Project-based Assistance: Occupancy Requirements

5.653 Section 8 project-based assistance programs: Admission–Income-eligibility and income-targeting.

(a) Applicability. This section describes requirements concerning income-eligibility and income-targeting that apply to the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) Who is eligible? (1) Basic eligibility. An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in 5.403, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) Low income limit. No family other than a low income family is eligible for admission to the Section 8 project-based assistance programs. (This paragraph (b) does not apply to the Section 8 project-based voucher program under part 983 of this title.)

(c) Targeting to extremely low income families. For each project assisted under a contract for project-based assistance, of the dwelling units that become available for occupancy in any fiscal year that are assisted under the contract, not less than 40 percent shall be available for leasing only by families that are extremely low income families at the time of admission.

(d) Limitation on admission of non-very low income families.

(1) Admission to units available before October 1, 1981. Not more than 25 percent of the Section 8 project-based dwelling units that were available for occupancy under Section 8 Housing Assistance Payments Contracts effective before October 1, 1981 and that are leased on or after that date shall be available for leasing by low income families other than very low income families. HUD reserves the right to limit the admission of low income families other than very low income families to these units.

(2) Admission to units available on or after October 1, 1981. Not more than 15 percent of the Section 8 project-based dwelling units that initially become available for occupancy under Section 8 Housing Assistance Payments (PHAP) Contracts on or after October 1, 1981 shall be available for leasing by low income families other than families that are very low income families at the time of admission to the Section 8 program. Except with the prior approval of HUD under paragraphs (d)(3) and (d)(4) of this section, the owner may only lease such units to very low income families.

(3) Request for exception. A request by an owner for approval of admission of low income families other than very low income families to section 8 project-based units must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(i) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are very low income families;

(ii) Commitment of an owner to attaining occupancy by families with a broad range of incomes;

(iii) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103); and

(iv) Low-income families that otherwise would be displaced from a Section 8 project.

(4) Action on request for exception. Whether to grant any request for exception is a matter committed by law to HUD's discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) Income used for eligibility and targeting. Family annual income (see 5.609) is used both for determination of income-eligibility and for income-targeting under this section.

(f) Reporting. The Section 8 owner must comply with HUD-prescribed reporting requirements, including income reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-eligibility and income-targeting requirements.

5.655 Section 8 project-based assistance programs: Owner preferences in selection for a project or unit.

(a) Applicability. This section applies to the section 8 project-based assistance programs. The section describes requirements concerning the Section 8 owner's selection of residents to occupy a project or unit, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) Selection. (1) Selection for owner's project or unit. Selection for occupancy of a project or unit is the function of the Section 8 owner. However, selection is subject to the income-eligibility and income-targeting requirements in 5.653.

(2) Tenant selection plan. The owner must adopt a written tenant selection plan in accordance with HUD requirements.

(3) Amount of income. The owner may not select a family for occupancy of a project or unit in an order different from the order on the owner's waiting list for the purpose of selecting a relatively higher income family. However, an owner may select a family for occupancy of a project or unit based on its income in order to satisfy the targeting requirements of 5.653(c).

(4) Selection for particular unit. In selecting a family to occupy a particular unit, the owner may match family characteristics with the type of unit available, for example, number of bedrooms. If a unit has special accessibility features for persons with disabilities, the owner must first offer the unit to families which include persons with disabilities who require such features (see 8.27 and 100.202 of this title).

(5) Housing assistance limitation for single persons. A single person who is not an elderly or displaced person, a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(c) Particular owner preferences. The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(1) Residency requirements or preferences.

(i) Residency requirements are prohibited. Although the owner is not prohibited from adopting a residency preference, the owner may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at 5.105(a).

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ('residency preference area').

(iii) An owner's residency preference must be approved by HUD in one of the following methods:

(A) Prior approval of the housing market area in the Affirmative Fair Housing Marketing plan (in accordance with 108.25 of this title) as a residency preference area;

(B) Prior approval of the residency preference area in the PHA plan of the jurisdiction in which the project is located;

(C) Modification of the Affirmative Fair Housing Marketing Plan, in accordance with 108.25 of this title,

(iv) Use of a residency preference may not have the purpose or effect of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(v) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(vi) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The owner may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) Preference for working families.

(i) The owner may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities.

(ii) If the owner adopts a preference for admission of working families, the owner must not give a preference based on the amount of earned income.

(3) Preference for person with disabilities. The owner may adopt a preference for admission of families that include a person with disabilities. However, the owner may not adopt a preference for admission of persons with a specific disability.

(4) Preference for victims of domestic violence. The owner should consider whether to adopt a preference for admission of families that include victims of domestic violence.

(5) Preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons. The owner may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.

(a) Applicability. This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

*(b) Regular reexami*nation. The owner must conduct a reexamination and redetermination of family income and composition at least annually.

(c) Interim reexaminations. A family may request an interim reexamination of family income because of any changes since the last examination. The owner must make the interim reexamination within a reasonable time after the family request. The owner may adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(d) Streamlined income determination—(1) *General.* An owner may elect to apply a streamlined income determination to families receiving fixed income as described in paragraph (d)(3) of this section.

(2) *Definition of* "*fixed income*". For purposes of this section, "fixed income" means periodic payments at reasonably predictable levels from one or more of the following sources:

(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance. (ii) Federal, state, local, or private pension plans.

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

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

(3) *Method of streamlined income determination.* Owners using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(i) When 90 percent or more of a family's unadjusted income consists of fixed income, owners using streamlined income determinations must apply a COLA or COLAs to the family's fixed income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, owners are not required to make appropriate adjustments pursuant to paragraph (b) of this section.

(ii) When less than 90 percent of a family's unadjusted income consists of fixed income, owners using streamlined income determinations must apply a COLA to each of the family's sources of fixed income. Owners must determine all other income pursuant to paragraph (b) of this section.

(4) *COLA rate applied by owners.* Owners using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the owner must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(5) *Triennial verification.* For any income determined pursuant to a streamlined income determination, an owner must obtain third-party verification of all income amounts every 3 years.

(d) *Streamlined income determination*. For any family member with a fixed source of income, an owner may elect to determine that family member's income, as required by paragraph (b) of this section, by means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.

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

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

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

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

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

(2) An owner must use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. The owner must verify the appropriate COLA or current rate of interest from a public source or through tenant-provided, third party–generated documentation. If no such verification is available, then the owner must obtain third-party verification of income amounts in order to calculate the change in income for the source.

(3) For any family member whose income is determined pursuant to a streamlined income determination, an owner must obtain third-party verification of all fixed-income amounts every 3 years. Other income for each family member must be determined pursuant to paragraph (b) of this section.

5.659 Family information and verification.

(a) Applicability. This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation program and the project-based certificate or voucher programs.

(b) Family obligation to supply information. (1) The family must supply any information that HUD or the owner determines is necessary in administration of the Section 8 program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). 'Information' includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the owner or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

(c) Family release and consent. (1) As a condition of admission to or continued occupancy of a unit with Section 8 assistance, the owner must require the family head, and such other family members as the owner designates, to execute a HUD-approved release and consent form (including any release and consent as required under 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the owner or HUD such information as the owner or HUD determines to be necessary.

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the Section 8 program.

(d) Owner responsibility for verification. Except allowed under paragraph (e), the owner must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

(1) Reported family annual income;

(2) The value of assets;

(3) Expenses related to deductions from annual income; and

(4) Other factors that affect the determination of adjusted income.

(e) Verification of assets. For a family with net assets equal to or less than $5,000, an owner may accept, for purposes of recertification of income, a family's declaration that it has net assets equal to or less than $5,000 without taking additional steps to verify the accuracy of the declaration, except as required in paragraph (e)(2) of this section.

(1) The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

(2) An owner must obtain third-party verification of all family assets every 3 years.

5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project.

(a) Applicability. This section describes when a Section 8 owner may lease a Section 8 unit to police or other security personnel with continued Section 8 assistance for the unit. This section applies to the Section 8 project-based assistance programs.

(b) Terms. (1) *Security personnel* means:

(i) A police officer, or

(ii) A qualified security professional, with adequate training and experience to provide security services for project residents.

(2) Police officer means a person employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments.

(3) Security includes the protection of project residents, including resident project management from criminal or other activity that is a threat to person or property, or that arouses fears of such threat.

(c) Owner application. (1) The owner may submit a written application to the contract administrator (PHA or HUD) for approval to lease an available unit in a Section 8 project to security personnel who would not otherwise be eligible for Section 8 assistance, for the purpose of increasing security for Section 8 families residing in the project.

(2) The owner's application must include the following information:

(i) A description of criminal activities in the project and the surrounding community, and the effect of criminal activity on the security of project residents.

(ii) Qualifications of security personnel who will reside in the project, and the period of residence by such personnel. How owner proposes to check backgrounds and qualifications of any security personnel who will reside in the project.

(iii) Full disclosure of any family relationship between the owner and any security personnel. For this purpose, 'owner' includes a principal or other interested party.

(iv) How residence by security personnel in a project unit will increase security for Section 8 assisted families residing in the project.

(v) The amount payable monthly as rent to the unit owner by security personnel residing in the project (including a description of how this amount is determined), and the amount of any other compensation by the owner to such resident security personnel.

(vi) The terms of occupancy by such security personnel. The lease by owner to the approved security personnel may provide that occupancy of the unit is authorized only while the security personnel is satisfactorily performing any agreed responsibilities and functions for project security.

(vii) Other information as requested by the contract administrator.

(d) Action by contract administrator. (1) The contract administrator shall have discretion to approve or disapprove owner's application, and to impose conditions for approval of occupancy by security personnel in a section 8 project unit.

(2) Notice of approval by the contract administrator shall specify the term of such approved occupancy. Such approval may be withdrawn at the discretion of the contract administrator, for example, if the contract administrator determines that such occupancy is not providing adequate security benefits as proposed in the owner's application; or that security benefits from such occupancy are not a sufficient return for program costs.

(e) Housing assistance payment and rent. (1) During approved occupancy by security personnel as provided in this section, the amount of the monthly housing assistance payment to the owner shall be equal to the contract rent (as determined in accordance with the HAP contract and HUD requirements) minus the amount (as approved by the contract administrator) of rent payable monthly as rent to the unit owner by such security personnel. The owner shall bear the risk of collecting such rent from such security personnel, and the amount of the housing assistance payment shall not be increased because of non-payment by such security personnel. The owner shall not be entitled to receive any vacancy payment for the period following occupancy by such security personnel.

(2) In approving the amount of monthly rent payable by security personnel for occupancy of a contract unit, the contract administrator may consider whether security services to be performed are an adequate return for housing assistance payments on the unit, or whether the cost of security services should be borne by the owner from other project income.

Subpart G Physical Condition Standards and Inspection Requirements

5.701 Applicability.

(a) This subpart applies to housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. 'Project-based assistance' means Section 8 assistance that is attached to the structure (see 982.1(b)(1) of this title regarding the distinction between 'project-based' and 'tenant-based' assistance);

(2) Section 202 Program of Supportive Housing for the Elderly;

(3) Section 811 Program of Supportive Housing for Persons with Disabilities;

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).

HUD housing must be decent, safe, sanitary and in good repair. Owners of housing described in 5.701(a), mortgagors of housing described in 5.701(b), and PHAs and other entities approved by HUD owning housing described in 5.701(c), must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) Site. The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(b) Building exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(c) Building systems. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(d) Dwelling units. (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities).

(3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(4) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(e) Common areas. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

(f) Health and safety concerns. All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(g) Compliance with State and local codes. The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

5.705 Uniform physical inspection requirements.

(a) Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually (unless otherwise specifically notified by HUD), in accordance with HUD-prescribed physical inspection procedures. For Public Housing, PHAs have the option to inspect Public Housing units using the procedures prescribed in accordance with this section.

(b) Inspections in accordance with the physical inspection procedures identified in paragraph (a) of this section shall not be required until HUD has issued the inspection software and accompanying guidebook. When the software and guidebook have been issued, HUD will publish a notice in the *Federal Register* to inform the public when the software and guidebook are available. The notice will provide 30 days within which covered entities must prepare to conduct inspections in accordance with this subpart. Until the date that is 30 days after HUD publishes such notice, any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must continue to comply with inspection requirements in effect immediately prior to that date.

Subpart H Uniform Financial Reporting Standards

5.801 Uniform financial reporting standards.

(a) Applicability. This subpart H implements uniform financial reporting standards for:

(1) Public housing agencies (PHAs) receiving assistance under sections 5, 9, or 14 of the 1937 Act (42 U.S.C. 1437c, 1437g, and 1437l) (Public Housing);

(2) PHAs as contract administrators for any Section 8 project-based or tenant-based housing assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program.

(3) Owners of housing assisted under any Section 8 project-based housing assistance payments program:

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program;

(4) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under the following HUD programs:

(i) Section 202 Program of Supportive Housing for the Elderly;

(ii) Section 811 Program of Supportive Housing for Persons with Disabilities;

(iii) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects);

(iv) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 et seq.) (Rental Housing Insurance);

(v) Section 213 of the NHA (Cooperative Housing Insurance);

(vi) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(vii) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(viii) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(ix) Section 231 of the NHA (Housing for Elderly Persons);

(x) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(xi) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(xii) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(xiii) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(b) Submission of financial information. Entities (or individuals) to which this subpart is applicable must provide to HUD, on an annual basis, such financial information as required by HUD. This financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplementary guidance;

(2) Submitted electronically to HUD through the internet, or in such other electronic format designated by HUD, or in such non-electronic format as HUD may allow if the burden or cost of electronic reporting is determined by HUD to be excessive; and

(3) Submitted in such form and substance as prescribed by HUD.

(c) Annual financial report filing dates. (1) For entities listed in paragraphs (a)(1) and (2) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law (for public housing agencies, see also 24 CFR 903.33).

(2) For entities listed in paragraphs (a)(3) and (4) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 90 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(d) Reporting compliance dates. Entities (or individuals) that are subject to the reporting requirements in this section must commence compliance with these requirements as follows:

(1) For PHAs listed in paragraphs (a)(1) and (a)(2) of this section, the requirements of this section will begin with those PHAs with fiscal years ending September 30, 1999 and later. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A-133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

(2) For entities listed in paragraphs (a)(3) and (a)(4) of this section, the requirements of this section will begin with those entities with fiscal years ending December 31, 1998 and later. Entities listed in paragraphs (a)(3) and (a)(4) of this section with fiscal years ending December 31, 1998 that elect to submit their reports earlier than the due date must submit their financial reports as required in this section. On or after September 30, 1998 but prior to January 1, 1999, these entities may submit their financial reports in accordance with this section.

(e) Limitation on changing fiscal years. To allow for a period of consistent assessment of the financial reports submitted to HUD under this subpart part, PHAs listed in paragraphs (a)(1) and (a)(2) of this section will not be allowed to change their fiscal years for their first three full fiscal years following October 1, 1998.

(f) Responsibility for submission of financial report. The responsibility for submission of the financial report due to HUD under this section rests with the individuals and entities listed in paragraph (a) of this section.

Subpart I Preventing Crime in Federally Assisted Housing—Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse

General

5.850 Which subsidized housing is covered by this subpart?

(a) If you are the owner of federally assisted housing, your federally assisted housing is covered, except as provided in paragraph (b) or (c) of this section.

(b) If you are operating public housing, this subpart does not apply, but similar provisions applicable to public housing units are found in parts 960 and 966 of this title. If you administer tenant-based assistance under Section 8 or you are the owner of housing assisted with tenant-based assistance under Section 8, this subpart does not apply to you, but similar provisions that do apply are located in part 982 of this title.

(c) If you own or administer housing assisted by the Rural Housing Administration under section 514 or section 515 of the Housing Act of 1949, this subpart does not apply to you.

5.851 What authority do I have to screen applicants and to evict tenants?

(a) *Screening applicants.* You are authorized to screen applicants for the programs covered by this part. The provisions of this subpart implement statutory directives that either *require* or *permit* you to take action to deny admission to applicants under certain circumstances in accordance with established standards, as described in this subpart. The provisions of this subpart do not constrain your authority to screen out applicants who you determined are unsuitable under your standards for admission.

(b) *Terminating tenancy.* You are authorized to terminate tenancy of tenants, in accordance with your leases and landlord-tenant law for the programs covered by this part. The provisions of this subpart implement statutory directives that either require or permit you to terminate tenancy under certain circumstances, as provided in 42 U.S.C. 1437f, 1437n, and 13662, in accordance with established standards, as described in this subpart. You retain authority to terminate tenancy on any basis that is otherwise authorized.

5.852 What discretion do I have in screening and eviction actions?

(a) *General.* If the law and regulation permit you to take an action but do not require action to be taken, you may take or not take the action in accordance with your standards for admission and eviction. Consistent with the application of your admission and eviction standards, you may consider all of the circumstances relevant to a particular admission or eviction case, such as:

(1) The seriousness of the offending action;

(2) The effect on the community of denial or termination or the failure of the responsible entity to take such action;

(3) The extent of participation by the leaseholder in the offending action;

(4) The effect of denial of admission or termination of tenancy on household members not involved in the offending action;

(5) The demand for assisted housing by families who will adhere to lease responsibilities;

(6) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and

(7) The effect of the responsible entity's action on the integrity of the program.

(b) *Exclusion of culpable household member.* You may require an applicant (or tenant) to exclude a household member in order to be admitted to the housing program (or continue to reside in the assisted unit), where that household member has participated in or been culpable for action or failure to act that warrants denial (or termination).

(c) *Consideration of rehabilitation.* (1) In determining whether to deny admission or terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, you may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, you may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(2) If rehabilitation is not an element of the eligibility determination (see 5.854(a)(1) for the case where it must be considered), you may choose not to consider whether the person has been rehabilitated.

(d) *Length of period of mandatory prohibition on admission.* If a statute requires that you prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, you may apply that prohibition for a longer period of time.

(e) *Nondiscrimination limitation.* Your admission and eviction actions must be consistent with fair housing and equal opportunity provisions of 5.105.

5.853 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, other person under the tenant's control, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(b) *Additional terms* used in this part are as follows.

Currently engaging in. With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, *currently engaging in* means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.

Owner. The owner of federally assisted housing.

Responsible entity. For the Section 8 project-based certificate or project-based voucher program (part 983 of this title) and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an Annual Contributions Contract with HUD. For all other federally assisted housing, the responsible entity means the owner of the housing.

Denying Admissions

5.854 When must I prohibit admission of individuals who have engaged in drug-related criminal activity?

(a) You *must* prohibit admission to your federally assisted housing of an applicant for three years from the date of eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, you may admit the household if:

(1) The evicted household member who engaged in drug-related criminal activity has successfully completed an approved supervised drug rehabilitation program; or

(2) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(b) You *must* establish standards that prohibit admission of a household to federally assisted housing if:

(1) You determine that any household member is currently engaging in illegal use of a drug; or

(2) You determine that you have reasonable cause to believe that a household member's illegal use or a pattern of illegal use of a drug may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

5.855 When am I specifically authorized to prohibit admission of individuals who have engaged in criminal activity?

(a) You may prohibit admission of a household to federally assisted housing under your standards if you determine that any household member is currently engaging in, or has engaged in during a reasonable time before the admission decision:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(4) Other criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor or agent of the PHA or owner who is involved in the housing operations.

(b) You may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (a) of this section (*reasonable time*).

(c) If you previously denied admission to an applicant because of a determination concerning a member of the household under paragraph (a) of this section, you may reconsider the applicant if you have sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, determined by you, before the admission decision.

(1) You would have *sufficient evidence* if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which you verified. (See subpart J of this part for one method of checking criminal records.)

(2) For purposes of this section, a household member is *currently engaged in* the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

5.856 When must I prohibit admission of sex offenders?

You must establish standards that prohibit admission to federally assisted housing if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, you must perform necessary

criminal history background checks in the State where the housing is located and in other States where the household members are known to have resided.(See 5.905.)

5.857 When must I prohibit admission of alcohol abusers?

You must establish standards that prohibit admission to federally assisted housing if you determine you have reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Terminating Tenancy

5.858 What authority do I have to evict drug criminals?

The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for you to terminate tenancy. In addition, the lease must allow you to evict a family when you determine that a household member is illegally using a drug or when you determine that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

5.859 When am I specifically authorized to evict other criminals?

(a) *Threat to other residents.* The lease *must* provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or

(2) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.

(b) *Fugitive felon or parole violator.* The lease *must* provide that you may terminate the tenancy during the term of the lease if a tenant is:

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

(2) Violating a condition of probation or parole imposed under Federal or State law.

5.860 When am I specifically authorized to evict alcohol abusers?

The lease must provide that you may terminate the tenancy if you determine that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

5.861 What evidence of criminal activity must I have to evict?

You may terminate tenancy and evict the tenant through judicial action for criminal activity by a covered person in accordance with this subpart if you determine that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity.

Subpart J Access to Criminal Records and Information

5.901 To what criminal records and searches does this subpart apply?

(a) *General criminal records searches.* This subpart applies to criminal conviction background checks by PHAs that administer the Section 8 and public housing programs when they obtain criminal conviction records, under the authority of section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)), from a law enforcement agency to prevent admission of criminals to public housing and Section 8 housing and to assist in lease enforcement and eviction.

(b) *Sex offender registration records searches.* This subpart applies to PHAs that administer the Section 8 and public housing programs when they obtain sex offender registration information from State and local agencies, under the authority of 42 U.S.C. 13663, to prevent admission of dangerous sex offenders to federally assisted housing.

(c) *Excluded records searches.* The provisions of this subpart do not apply to criminal conviction information or sex offender information searches by a PHA or others of information from law enforcement agencies or other sources other than as provided under this subpart.

5.902 Definitions.

(a) *Terms found elsewhere.* The following terms used in this subpart are defined in subpart A of this part: *1937 Act, drug, federally assisted housing, household, HUD, public housing, public housing agency (PHA), Section 8.*

(b) *Additional terms* used in this subpart are as follows:

Adult. A person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

Covered housing. Public housing, project-based assistance under section 8 (including new construction and substantial rehabilitation projects), and tenant-based assistance under section 8.

Law enforcement agency. The National Crime Information Center (NCIC), police departments and other law enforcement agencies that hold criminal conviction records.

Owner. The owner of federally assisted housing.

Responsible entity. For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based voucher program (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an Annual Contributions Contract with HUD. For all other Section 8 programs, responsible entity means the Section 8 owner.

5.903 What special authority is there to obtain access to criminal records?

(a) *Authority.* If you are a PHA that administers the Section 8 program and/ or the public housing program, this section authorizes you to obtain criminal conviction records from a law enforcement agency, as defined in 5.902. You may use the criminal conviction records that you obtain from a law enforcement agency under the authority of this section to screen applicants for admission to covered housing programs and for lease enforcement or eviction of families residing in public housing or receiving Section 8 project-based assistance.

(b) *Consent for release of criminal conviction records.* (1) In order to obtain access to records under this section, as a responsible entity you must require every applicant family to submit a consent form signed by each adult household member.

(2) By execution of the consent form, an adult household member consents that:

(i) Any law enforcement agency may release criminal conviction records concerning the household member to a PHA in accordance with this section;

(ii) The PHA may receive the criminal conviction records from a law enforcement agency, and may use the records in accordance with this section.

(c) *Procedure for PHA.* (1) When the law enforcement agency receives your request, the law enforcement agency must promptly release to you a certified copy of any criminal conviction records concerning the household member in the possession or control of the law enforcement agency. NCIC records must be provided in accordance with NCIC procedures.

(2) The law enforcement agency may charge you a reasonable fee for releasing criminal conviction records.

(d) *Owner access to criminal records.*—(1) *General.* (i) If an owner submits a request to the PHA for criminal records concerning an adult member of an applicant or resident household, in accordance with the provisions of paragraph (d) of this section, the PHA must request the criminal conviction records from the appropriate law enforcement agency or agencies, as determined by the PHA.

(ii) If the PHA receives criminal conviction records requested by an owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for applicant screening, lease enforcement or eviction, as applicable in accordance with HUD regulations and the owner criteria.

(iii) The PHA must notify the owner whether the PHA has received criminal conviction records concerning the household member, and of its determination whether such criminal conviction records may be a basis for applicant screening, lease enforcement or eviction. However, except as provided in paragraph (e)(2)(ii) of this section, the PHA must not disclose the household member's criminal conviction record or the content of that record to the owner.

(2) *Screening.* If you are an owner of covered housing, you may request that the PHA in the jurisdiction of the property obtain criminal conviction records of an adult household member from a law enforcement agency on your behalf for the purpose of screening applicants.

(i) Your request must include a copy of the consent form, signed by the household member.

(ii) Your request must include your standards for prohibiting admission of drug criminals in accordance with 5.854, and for prohibiting admission of other criminals in accordance with 5.855.

(3) *Eviction or lease enforcement.* If you are an owner of a unit with Section 8 project-based assistance, you may request that the PHA in the location of the project obtain criminal conviction records of a household member from an appropriate law enforcement agency on your behalf in connection with lease enforcement or eviction.

(i) Your request must include a copy of the consent form, signed by the household member. (ii) If you intend to use the PHA determination regarding any such criminal conviction records in connection with eviction, your request must include your standards for evicting drug criminals in accordance with 5.857, and for evicting other criminals in accordance with 5.858.

(iii) If you intend to use the PHA determination regarding any such criminal conviction records for lease enforcement other than eviction, your request must include your standards for lease enforcement because of criminal activity by members of a household.

(4) *Fees.* If an owner requests a PHA to obtain criminal conviction records in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by the law enforcement agency, the PHA's own related staff and administrative costs. The owner may not pass along to the applicant or tenant the costs of a criminal records check.

(e) *Permitted use and disclosure of criminal conviction records received by PHA—(1) Use of records.* Criminal conviction records received by a PHA from a law enforcement agency in accordance with this section may only be used for the following purposes:

(i) *Applicant screening.* (A) PHA screening of applicants for admission to public housing (part 960 of this title); (B) PHA screening of applicants for admission to the Housing Choice Voucher Program (section 8 tenant-based assistance) (part 982 of this title);

(C) PHA screening of applicants for admission to the Section 8 moderate rehabilitation program (part 882 of this title); or the Section 8 project-based certificate or project-based voucher program (part 983 of this title); or

(D) PHA screening concerning criminal conviction of applicants for admission to Section 8 project-based assistance, at the request of the owner. (For requirements governing use of criminal conviction records obtained by a PHA at the request of a Section 8 owner under this section, see paragraph (d) of this section.)

(ii) *Lease enforcement and eviction.*

(A) PHA enforcement of public housing leases and PHA eviction of public housing residents;

(B) Enforcement of leases by a Section 8 project owner and eviction of residents by a Section 8 project owner. (However, criminal conviction records received by a PHA from a law enforcement agency under this section may not be used for lease enforcement or eviction of residents receiving Section 8 tenant-based assistance.)

(2) *PHA disclosure of records.* (i) A PHA may disclose the criminal conviction records which the PHA receives from a law enforcement agency only as follows:

(A) To officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information. For example, if the PHA is seeking to evict a public housing tenant on the basis of criminal activity as shown in criminal conviction records provided by a law enforcement agency, the records may be disclosed to PHA employees performing functions related to the eviction, or to a PHA hearing officer conducting an administrative grievance hearing concerning the proposed eviction.

(B) To the owner for use in connection with judicial eviction proceedings by the owner to the extent necessary in connection with a judicial eviction proceeding. For example, criminal conviction records may be included in pleadings or other papers filed in an eviction action, may be disclosed to parties to the action or the court, and may be filed in court or offered as evidence.

(ii) This disclosure may be made only if the following conditions are satisfied:

(A) If the PHA has determined that criminal activity by the household member as shown by such records received from a law enforcement agency may be a basis for eviction from a Section 8 unit; and

(B) If the owner certifies in writing that it will use the criminal conviction records only for the purpose and only to the extent necessary to seek eviction in a judicial proceeding of a Section 8 tenant based on the criminal activity by the household member that is described in the criminal conviction records.

(iii) The PHA may rely on an owner's certification that the criminal record is necessary to proceed with a judicial eviction to evict the tenant based on criminal activity of the identified household member, as shown in the criminal conviction record.

(iv) Upon disclosure as necessary in connection with judicial eviction proceedings, the PHA is not responsible for controlling access to or knowledge of such records after such disclosure.

(f) *Opportunity to dispute.* If a PHA obtains criminal record information from a State or local agency under this section showing that a household member has been convicted of a crime relevant to applicant screening, lease enforcement or eviction, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant or tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

(g) *Records management.* Consistent with the limitations on disclosure of records in paragraph (e) of this section, the PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is:

(1) Maintained confidentially;

(2) Not misused or improperly disseminated; and

(3) Destroyed, once the purpose(s) for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

(h) *Penalties for improper release of information.*—(1) *Criminal penalty.* Conviction for a misdemeanor and imposition of a penalty of not more than $5,000 is the potential for: (i) Any person, including an officer, employee, or authorized representative of any PHA or of any project owner, who knowingly and willfully requests or obtains any information concerning an applicant for, or tenant of, covered housing assistance under the authority of this section under false pretenses; or

(ii) Any person, including an officer, employee, or authorized representative of any PHA or a project owner, who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive the information.

(2) *Civil liability.* (i) A PHA may be held liable to any applicant for, or tenant of, covered housing assistance affected by either of the following: ' (A) A negligent or knowing disclosure of criminal records information obtained under the authority of this section about such person by an officer, employee, or authorized representative of the PHA if the disclosure is not authorized by this section; or

(B) Any other negligent or knowing action that is inconsistent with this section.

(ii) An applicant for, or tenant of, covered housing assistance may seek relief against a PHA in these circumstances by bringing a civil action for damages and such other relief as may be appropriate against the PHA responsible for such unauthorized action. The United States district court in which the affected applicant or tenant resides, in which the unauthorized action occurred, or in which the officer, employee, or representative alleged to be responsible resides, has jurisdiction. Appropriate relief may include reasonable attorney's fees and other litigation costs.

5.905 What special authority is there to obtain access to sex offender registration information?

(a) *PHA obligation to obtain sex offender registration information.* (1) A PHA that administers a Section 8 or public housing program under an Annual Contributions Contract with HUD must carry out background checks necessary to determine whether a member of a household applying for admission to any federally assisted housing program is subject to a lifetime sex offender registration requirement under a State sex offender registration program. This check must be carried out with respect to the State in which the housing is located and with respect to States where members of the applicant household are known to have resided.

(2) If the PHA requests such information from any State or local agency responsible for the collection or maintenance of such information, the State or local agency must promptly provide the PHA such information in its possession or control.

(3) The State or local agency may charge a reasonable fee for providing the information.

(b) *Owner's request for sex offender registration information.*—(1) *General.* An owner of federally assisted housing that is located in the jurisdiction of a PHA that administers a Section 8 or public housing program under an Annual Contributions Contract with HUD may request that the PHA obtain information necessary to determine whether a household member is subject to a lifetime registration requirement under a State sex offender registration requirement.

(2) *Procedure.* If the request is made in accordance with the provisions of paragraph (b) of this section:

(i) The PHA must request the information from a State or local agency;

(ii) The State or local agency must promptly provide the PHA such information in its possession or control;

(iii) The PHA must determine whether such information may be a basis for applicant screening, lease enforcement or eviction, based on the criteria used by the owner as specified in the owner's request, and inform the owner of the determination.

(iv) The PHA must notify the owner of its determination whether sex offender registration information received by the PHA under this section concerning a household member may be a basis for applicant screening, lease enforcement or eviction in accordance with HUD requirements and the criteria used by the owner.

(3) *Contents of request.* As the owner, your request must specify whether you are asking the PHA to obtain the sex offender registration information concerning the household member for applicant screening, for lease enforcement, or for eviction and include the following information:

(i) Addresses or other information about where members of the household are known to have lived. (ii) If you intend to use the PHA determination regarding any such sex offender registration information for applicant screening, your request must include your standards in accordance with 5.855(c) for prohibiting admission of persons subject to a lifetime sex offender registration requirement.

(iii) If you intend to use the PHA determination regarding any such sex offender registration information for eviction, your request must include your standards for evicting persons subject to a lifetime registration requirement in accordance with 5.858.

(iv) If you intend to use the PHA determination regarding any such sex offender registration information for lease enforcement other than eviction, your request must include your standards for lease enforcement because of criminal activity by members of a household.

(4) *PHA disclosure of records.* The PHA must not disclose to the owner any sex offender registration information obtained by the PHA under this section.

(5) *Fees.* If an owner asks a PHA to obtain sex offender registration information concerning a household member in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by a State or local agency for releasing the information, the PHA's own related staff and administrative costs. The owner may not pass along to the applicant or tenant the costs of a sex offender registration records check.

(c) *Records management.* (1) The PHA must establish and implement a system of records management that ensures that any sex offender registration information record received by the PHA from a State or local agency under this section is:

(i) Maintained confidentially;

(ii) Not misused or improperly disseminated; and

(iii) Destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

(2) The records management requirements do not apply to information that is public information, or is obtained by a PHA other than under this section.

(d) *Opportunity to dispute.* If a PHA obtains sex offender registration information from a State or local agency under paragraph (a) of this section showing that a household member is subject to a lifetime sex offender registration requirement, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record, and the applicant or tenant, with a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

Subpart K Application Submission Requirements

5.1001 Applicability.

This subpart applies to all applicants for HUD grants, cooperative agreements, capital fund or operating fund subsidy, capital advance, or other assistance under HUD programs, including grant programs that are classified by OMB as including formula grant programs or activities, but excluding FHA insurance and loan guarantees that are not associated with a grant program or grant award.

5.1003 Use of a universal identifier for organizations applying for HUD grants.

(a) Every application for a new or renewal of a grant, cooperative agreement, capital fund or operating fund subsidy, capital advance, or other assistance, including an application or plan under a grant program that is classified by OMB as including formula grant programs, must include a Data Universal Numbering System (DUNS) number for the applicant.

(b) (1) Applicants or groups of applicants under a consortium arrangement must have a DUNS number for the organization that is submitting the application for federal assistance as the lead applicant on behalf of the other applicants. If each organization is submitting a separate application as part of a group of applications, then each organization must include its DUNS

number with its application submission.

(2) If an organization is submitting an application as a sponsor or on behalf of other applicants, and the other entities will be receiving funds directly from HUD, then the applicant or sponsor must submit an application for funding that includes the DUNS number of each applicant that would receive funds directly from HUD.

(3) If an organization is managing funds for a group of organizations, a DUNS number must be submitted for the managing organization, if it is drawing down funds directly from HUD.

(4) If an organization is drawing down funds directly from HUD and subsequently turning the funds over to a management organization, then the management organization must obtain a DUNS number and submit the number to HUD.

(c) Individuals who would personally receive a grant or other assistance from HUD, independent from any business or nonprofit organization with which they may operate or participate, are exempt from this requirement.

(d) In cases where individuals apply for funding, but the funding will be awarded to an institution or other entity on the individual's behalf, the institution or entity must obtain a DUNS number and the individual must submit the institution's DUNS number with the application.

(e) Unless an exemption is granted by OMB, HUD will not consider an application as complete until a valid DUNS number is provided by the applicant. For classes of grants and grantees subject to this part, exceptions to this rule must be submitted to OMB for approval in accordance with procedures prescribed by the Department.

Subpart L Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

5.2001 Applicability.

(a) This subpart addresses the protections for victims of domestic violence, dating violence, sexual assault, or stalking who are applying for, or are the beneficiaries of, assistance under a HUD program covered by the Violence Against Women Act (VAWA), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.) ("covered housing program," as defined in §5.2003). Notwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. Consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD programs must also be operated consistently with HUD's Equal Access Rule at §5.105(a)(2), which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

(b)(1) The applicable assistance provided under a covered housing program generally consists of two types of assistance (one or both may be provided): Tenant-based rental assistance, which is rental assistance that is provided to the tenant; and project-based assistance, which is assistance that attaches to the unit in which the tenant resides. For project- based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy. (2) The regulations in this subpart are supplemented by the specific regulations for the HUD-covered housing programs listed in §5.2003. The program-specific regulations address how certain VAWA requirements are to be implemented and whether they can be implemented (for example, reasonable time to establish eligibility for assistance as provided in §5.2009(b)) for the applicable covered housing program, given the statutory and regulatory framework for the program. When there is conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern. Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

5.2003 Definitions.

The definitions of *PHA, HUD, household*, and o*ther person under the tenant's control* are defined in subpart A of this part. As used in this subpart L:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD- covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Covered housing program consists of the following HUD programs:

(1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.

(2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.

(3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.), with implementing regulations at 24 CFR part 574.

(4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), with implementing regulations at 24 CFR part 92.

(5) Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming).

(6) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.

(7) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z–1), with implementing regulations at 24 CFR part 236.

(8) HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).

(9) The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).

Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for- profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and

responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity.

Dating violence means violence committed by a person:

(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship. Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) Fear for the person's individual safety or the safety of others; or (2) Suffer substantial emotional distress. VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

5.2005 VAWA Protections.

(a) *Notification of occupancy rights under VAWA, and certification form.* (1) A covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section:

(i) A "Notice of Occupancy Rights under the Violence Against Women Act," as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and

(ii) A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:

(A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;

(B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under §5.2003; and

(C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.

(2) The notice required by paragraph (a)(1)(i) of this section and certification form required by paragraph (a)(1)(ii) of this section must be provided to an applicant or tenant no later than at each of the following times:

(i) At the time the applicant is denied assistance or admission under a covered housing program;

(ii) At the time the individual is provided assistance or admission under the covered housing program;

(iii) With any notification of eviction or notification of termination of assistance; and

(iv) During the 12-month period following December 16, 2016, either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

(3) The notice required by paragraph (a)(1)(i) of this section and the certification form required by paragraph (a)(1)(ii) of this section must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the Federal Register on August 16, 2000 (at 65 FR 50121).

(4) For the Housing Choice Voucher program under 24 CFR part 982, the project-based voucher program under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, as well as project-based section 8 provided in connection with housing under part 891, the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking, as provided in this subpart.

(b) *Prohibited basis for denial or termination of assistance or eviction—* (1) *General*. An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) *Termination on the basis of criminal activity*. A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:

(i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and

(ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.

(c) *Construction of lease terms and terms of assistance.* An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

(1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or

(2) Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

(d) *Limitations of VAWA protections.* (1) Nothing in this section limits the authority of a covered housing provider, when notified of a court order, to comply with a court order with respect to:

(i) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(ii) The distribution or possession of property among members of a household.

(2) Nothing in this section limits any available authority of a covered housing provider to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. However, the covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

(3) Nothing in this section limits the authority of a covered housing provider to terminate assistance to or evict a tenant under a covered housing program if the covered housing provider can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to property of the covered housing provider would be present if that tenant or lawful occupant is not evicted or terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an "actual and imminent threat" if they meet the standards provided in the definition of "actual and imminent threat" in §5.2003.

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

(e) *Emergency transfer plan*. Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan, in accordance with the following:

(1) For purposes of this section, the following definitions apply:

(i) *Internal emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.

(ii) *External emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is the tenant must undergo an application process in order to reside in the new unit.

(iii) Safe unit refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

(2) The emergency transfer plan must provide that a tenant receiving rental assistance through, or residing in a unit subsidized under, a covered housing program who is a victim of domestic violence, dating violence, sexual assault, or stalking qualifies for an emergency transfer if:

(i) The tenant expressly requests the transfer; and

(ii)(A) The tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or

(B) In the case of a tenant who is a victim of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.

(3) The emergency transfer plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists.

(4) The emergency transfer plan must incorporate strict confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(5) The emergency transfer plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.

(6) The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.

(7) The emergency transfer plan must describe reasonable efforts the covered housing provider will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. The plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA out of the covered housing provider's program or project, and a tenant who is seeking an external emergency transfer under VAWA into the covered housing provider's program or project. These policies may include:

(i) Arrangements, including memoranda of understanding, with other covered housing providers to facilitate moves; and

(ii) Outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking.

(8) Nothing may preclude a tenant from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available.

(9) Where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and who meets the requirements of paragraph (e)(2) of this section to move quickly with that assistance.

(10) The emergency transfer plan may require documentation from a tenant seeking an emergency transfer, provided that:

(i) The tenant's submission of a written request to the covered housing provider, where the tenant certifies that they meet the criteria in paragraph (e)(2)(ii) of this section, shall be sufficient documentation of the requirements in paragraph (e)(2) of this section;

(ii) The covered housing provider may, at its discretion, ask an individual seeking an emergency transfer to document the occurrence of domestic violence, dating violence, sexual assault, or stalking, in accordance with §5.2007, for which the individual is seeking the emergency transfer, if the individual has not already provided documentation of that occurrence; and

(iii) No other documentation is required to qualify the tenant for an emergency transfer.

(11) The covered housing provider must make its emergency transfer plan available upon request and, when feasible, must make its plan publicly available.

(12) The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

(13) Nothing in this paragraph (e) may be construed to supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

5.2007 Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking.

(a) *Request for documentation*. (1) Under a covered housing program, if an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections under §5.2005, or remedies under §5.2009, the covered housing provider may request, in writing, that the applicant or tenant submit to the covered housing provider the documentation specified in paragraph (b)(1) of this section.

(2)(i) If an applicant or tenant does not provide the documentation requested under paragraph (a)(1) of this section within 14 business days after the date that the tenant receives a request in writing for such documentation from the covered housing provider, nothing in §5.2005 or §5.2009, which addresses the protections of VAWA, may be construed to limit the authority of the covered housing provider to:

(A) Deny admission by the applicant or tenant to the covered housing program;

(B) Deny assistance under the covered housing program to the applicant or tenant;

(C) Terminate the participation of the tenant in the covered housing program; or

(D) Evict the tenant, or a lawful occupant that commits a violation of a lease.

(ii) A covered housing provider may, at its discretion, extend the 14-business- day deadline under paragraph (a)(2)(i) of this section.

(b) *Permissible documentation and submission requirements.* (1) In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit:

(i) The certification form described in §5.2005(a)(1)(ii); or

(ii) A document:

(A) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;

(B) Signed by the applicant or tenant; and

(C) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under this subpart, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under §5.2003; or

(iii) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

(iv) At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

(2) If a covered housing provider receives documentation under paragraph (b)(1) of this section that contains conflicting information (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the covered housing provider may require an applicant or tenant to submit third-party documentation, as described in paragraphs (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section, within 30 calendar days of the date of the request for the third-party documentation.

(3) Nothing in this paragraph (b) shall be construed to require a covered housing provider to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) *Confidentiality*. Any information submitted to a covered housing provider under this section, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information), shall be maintained in strict confidence by the covered housing provider.

(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (e.g., contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

(2) The covered housing provider shall not enter confidential information described in paragraph (c) of this section into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is:

(i) Requested or consented to in writing by the individual in a time-limited release

(ii) Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or

(iii) Otherwise required by applicable law.

(d) A covered housing provider's compliance with the protections of §§5.2005 and 5.2009, based on documentation received under this section shall not be sufficient to constitute evidence of an unreasonable act or omission by the covered housing provider. However, nothing in this paragraph (d) of this section shall be construed to limit the liability of a covered housing provider for failure to comply with §§5.2005 and 5.2009.

5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.

(a) *Lease bifurcation*. (1) A covered housing provider may in accordance with paragraph (a)(2) of this section, bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual:

(i) Without regard to whether the household member is a signatory to the lease; and

(ii) Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

(2) A lease bifurcation, as provided in paragraph (a)(1) of this section, shall be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program.

(b) *Reasonable time to establish eligibility for assistance or find alternative housing following bifurcation of a lease*—(1) *Applicability*. The reasonable time to establish eligibility under a covered housing program or find alternative housing is specified in paragraph (b) of this section, or alternatively in the program- specific regulations governing the applicable covered housing program. Some covered housing programs may provide different time frames than are specified in this paragraph (b), and in such cases, the program-specific regulations govern.

(2) *Reasonable time to establish eligibility assistance or find alternative housing*. (i) If a covered housing provider exercises the option to bifurcate a lease as provided in paragraph (a) of this section, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

(A) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease; or

(B) Establish eligibility under another covered housing program; or

(C) Find alternative housing.

(ii) The 90-calendar-day period provided by paragraph (b)(2) of this section will not be available to a remaining household member if the statutory requirements for the covered housing program prohibit it. The 90-day calendar period also will not apply beyond the expiration of a lease, unless this is permitted by program regulations. The 90-calendar-day period is the total period provided to a remaining tenant to establish eligibility under the three options provided in paragraphs (b)(2)(i)(A), (B), and (C) of this section.

(iii) The covered housing provider may extend the 90-calendar-day period in paragraph (b)(2) of this section up to an additional 60 calendar days, unless prohibited from doing so by statutory requirements of the covered program or unless the time period would extend beyond expiration of the lease.

(c) *Efforts to promote housing stability for victims of domestic violence, dating violence, sexual assault, or stalking.* Covered housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

5.2011 Effect on other laws.

(a) Nothing in this subpart shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

(b) All applicable fair housing and civil rights statutes and requirements apply in the implementation of VAWA requirements. See §5.105(a).

PART 8 NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subpart A General Provisions

8.1 Purpose.

(a) The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), to the end that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. This part also implements section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309). This part does not effectuate section 504 as it applies to any program or activity conducted by the Department. Compliance with this part does not assure compliance with requirements for accessibility by physically-handicapped persons imposed under the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157; 24 CFR Part 40).

(b) The policies and standards for compliance established by this part are established in contemplation of, and with a view to enforcement through, the Department's administration of programs or activities receiving Federal financial assistance and the administrative procedures described in Subparts D and E (including, without limitation, judicial enforcement under 8.57(a)).

8.2 Applicability.

This part applies to all applicants for, and recipients of, HUD assistance in the operation of programs or activities receiving such assistance. Such assistance includes, but is not limited to, that which is listed in Appendix A of this part.

8.3 Definitions.

As used in this part:

'*Accessible*', when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase 'accessible to and usable by' is synonymous with accessible.

'*Accessible*', when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 8.32 is 'accessible' within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

'*Accessible route*' means a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments.

'*Adaptability*' means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.

'Alteration' means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

'Applicant for assistance' means one who submits an application, request, plan, or statement required to be approved by a Department official or by a primary recipient as a condition of eligibility for Federal financial assistance. An application means such a request, plan or statement.

'Auxiliary aids' means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

'Department' or 'HUD' means the Department of Housing and Urban Development.

'Facility' means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

'Federal financial assistance' means any assistance provided or otherwise made available by the Department through any grant, loan, contract or any other arrangement, in the form of: (a) Funds; (b) Services of Federal personnel; or (c) Real or personal property or any interest in or use of such property, including: (1) Transfers or leases of the property for less than fair market value or for reduced consideration; and (2) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

'Federal financial assistance' includes community development funds in the form of proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct Federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty.

'Handicap' means any condition or characteristic that renders a person an individual with handicaps.

'Historic preservation programs or activities' means programs or activities receiving Federal financial assistance that have preservation of historic properties as a primary purpose.

'Historic properties' means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

'Individual with handicaps' means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by

reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase: (a) 'Physical or mental impairment' includes: (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term 'physical or mental impairment' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism. (b) 'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. (c) 'Has a record of such an impairment' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. (d) 'Is regarded as having an impairment' means: (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation; (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or (3) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

'Multifamily housing project' means a project containing five or more dwelling units.

'Primary recipient' means a person, group, organization, State or local unit of government that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program or activity.

'Program or activity' means all of the operations of: (a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or (2) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government; (b)(1) A college, university, or other post-secondary institution, or a public system of higher education; or (2) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system; (c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship. (i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or (ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or (2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or (d) Any other entity which is established by two or more of the entities described in paragraphs (a), (b), or (c) of this section; any part of which is extended Federal financial assistance.

'Project' means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site.

'Qualified individual with handicaps' means: (a) With respect to employment, an individual with handicaps who, with reasonable accommodation, can perform the essential functions of the job in question; and (b) With respect to any non-employment program or activity which requires a person to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature; or (c) With respect to any other non-employment program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity. 'Essential eligibility requirements' include stated eligibility requirements such as income as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically mentally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be 'qualified' for occupancy in a project where such supportive services are provided by the recipient as part of the assisted program. The person may not be 'qualified' for a project lacking such services.

'Recipient' means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments.

'Replacement cost of the completed facility' means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

'Secretary' means the Secretary of Housing and Urban Development.

'Section 504' means section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance.

'Substantial impairment' means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

8.4 Discrimination prohibited.

(a) No qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department.

(b)(1) A recipient, in providing any housing, aid, benefit, or service in a program or activity that receives Federal financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap:

(i) Deny a qualified individual with handicaps the opportunity to participate in, or benefit from, the housing, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in, or benefit from, the housing, aid, benefit, or service that is not equal to that afforded to others;

(iii) Provide a qualified individual with handicaps with any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps from that provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others.

(v) Aid or perpetuate discrimination against a qualified individual with handicaps by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any housing, aid, benefit, or service to beneficiaries in the recipient's federally assisted program or activity;

(vi) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vii) Deny a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented or made available; or

(viii) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other qualified individuals receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and non-handicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) A recipient may not deny a qualified individual with handicaps the opportunity to participate in any federally assisted program or activity that is not separate or different despite the existence of permissibly separate or different programs or activities.

(4) In any program or activity receiving Federal financial assistance from the Department, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination solely on the basis of handicap;

(ii) Defeat or substantially impair the accomplishment of the objectives of the recipient's federally assisted program or activity for qualified individuals with a particular handicap involved in the program or activity, unless the recipient can demonstrate that the criteria or methods of administration are manifestly related to the accomplishment of an objective of a program or activity; or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would:

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance from the Department, or

(ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with handicaps.

(6) As used in this section, the housing, aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any housing, aid, benefit, or service provided in or through a facility that has been constructed, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c)(1) Non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain Department programs operate under statutory definitions of 'handicapped person' that are more restrictive than the definition of 'individual with handicaps' contained in 8.3 (see Appendix B). Those definitions are not superseded or otherwise affected by this regulation.

(d) Recipients shall administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (e) of this section does not limit the general prohibition in paragraph (a) of this section.

8.6 Communications.

(a) The recipient shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.

(1) The recipient shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

(i) In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps.

(ii) The recipient is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used.

(b) The recipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities.

(c) This section does not require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance.

8.28 Housing certificate and housing voucher programs.

(a) In carrying out the requirements of this subpart, a recipient administering a Section 8 Existing Housing Certificate program or a housing voucher program shall:

(1) In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt suitable means to assure that the notice reaches eligible individuals with handicaps;

(2) In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;

(3) When issuing a Housing Certificate or Housing Voucher to a family which includes an individual with handicaps include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;

(4) Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers; and

(5) If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception rent under 982.504(b)(2) for a regular tenancy under the Section 8 certificate program so that the program is readily accessible to and usable by persons with disabilities.

(b) In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of nondiscrimination.

PART 100 DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Subpart A General

100.5 Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions. The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.

(c) Nothing in this part relieves persons participating in a Federal or Federally-assisted program or activity from other requirements applicable to buildings and dwellings.

100.20 Definitions.

The terms Department, Fair Housing Act, and Secretary are defined in 24 CFR part 5.

'*Aggrieved person*' includes any person who—

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

'*Broker*' or '*Agent*' includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

'*Discriminatory housing practice*' means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

'*Dwelling*' means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

'*Familial status*' means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

'*Handicap*' is defined in 100.201.

'*Person*' includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under U.S.C. title 11 of the United States Code, receivers, and fiduciaries.

'*Person in the business of selling or renting dwellings*' means any person who:

(a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

'*State*' means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Subpart B Discriminatory Housing Practices

100.70 Other prohibited sale and rental conduct.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

(b) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

(c) Prohibited actions under paragraph (a) of this section, which are generally referred to as unlawful steering practices, include, but are not limited to:

(1) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.

(2) Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Prohibited activities relating to dwellings under paragraph (b) of this section include, but are not limited to:

(1) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

(2) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

(3) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

Subpart C Discrimination in Residential Real Estate-Related Transactions

100.120 Discrimination in the making of loans and in the provision of other financial assistance.

(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Practices prohibited under this section in connection with a residential real estate-related transaction include, but are not limited to:

(1) Failing or refusing to provide to any person information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Providing, failing to provide, or discouraging the receipt of loans or other financial assistance in a manner that discriminates in their denial rate or otherwise discriminates in their availability because of race, color, religion, sex, handicap, familial status, or national origin.

100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, cost, duration or other terms or conditions for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of race, color, religion, sex, handicap, familial status, or national origin.

100.202 General prohibitions against discrimination because of handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;

(3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;

(4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(d) Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

100.203 Reasonable modifications of existing premises.

(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

(b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

(c) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before

the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

100.204 Reasonable accommodations.

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of this section may be illustrated by the following examples:

Example (1): A blind applicant for rental housing wants live in a dwelling unit with a seeing eye dog. The building has a 'no pets' policy. It is a violation of 100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example (2): Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a 'first come first served' basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

Subpart G Discriminatory Effect

100.500 Discriminatory effect prohibited.

Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if supported by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.

(a) *Discriminatory effect.* A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

(b) *Legally sufficient justification.* (1) A legally sufficient justification exists where the challenged practice:

(i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and

(ii) Those interests could not be served by another practice that has a less discriminatory effect.

(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the two elements of a legally sufficient justification are set forth in paragraphs (c)(2) and (c)(3) of this section.

(c) *Burdens of proof in discriminatory effects cases.* (1) The charging party, with respect to a claim brought under 42 U.S.C. 3612, or the plaintiff, with respect to a claim brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.

(2) Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.

(3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

(d) *Relationship to discriminatory intent.* A demonstration that a practice is supported by a legally sufficient justification, as defined in paragraph (b) of this section, may not be used as a defense against a claim of intentional discrimination.

PART 903 PUBLIC HOUSING AGENCY PLANS

Subpart B PHA Plans

903.3 What is the purpose of this subpart?

(a) This subpart specifies the requirements for PHA plans, required by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c-1).

(b) The purpose of the plans is to provide a framework for:

(1) Local accountability; and

(2) An easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

903.4 What are the public housing agency plans?

(a) *Types of plans*. There are two public housing agency plans. They are:

(1) The 5-Year Plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every five PHA fiscal years. The 5-Year Plan covers the five PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD; and

(2) The Annual Plan (Annual Plan) that the PHA must submit to HUD for each fiscal year immediately following the date on which the Annual Plan is due to HUD and for which the PHA receives:

(i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(b) *Format*. HUD may prescribe the format of submission (including electronic format submission) of the plans. HUD also may prescribe the format of attachments to the plans and documents related to the plan that the PHA does not submit but may be required to make available locally. PHAs will receive appropriate notice of any prescribed format.

(c) *Applicability*. The requirements of this subpart only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.

(d) *Authority for waivers*. In addition to the waiver authority provided in 5.110 of this title, the Secretary may, subject to statutory limitations, waive any provision of this title on a program-wide basis, and delegate this authority in accordance with section 106 of the

Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)) where the Secretary determines that such waiver is necessary for the effective implementation of this part.

903.5 When must a PHA submit the plans to HUD?

(a) 5-Year Plan.

(1) The first PHA fiscal year that is covered by the requirements of this part as amended on December 22, 2000, is the PHA fiscal year that begins October 2001. This 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning October 1, 2001.

(2) For all PHAs, the first 5-Year Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year. However, HUD may require that half of all PHAs with less than 250 public housing units submit their 5-Year Plan one fiscal year in advance (in the fourth PHA fiscal year rather than the fifth PHA fiscal year).

(4) PHAs may choose to update their 5-Year Plans every year as good management practice and must update their 5-Year Plans that were submitted for PHA fiscal years beginning before October 1, 2001, to comply with the requirements of this part as amended on December 22, 2000, at the time they submit their next Annual Plan for fiscal years beginning on or after October 1, 2001. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan in accordance with 903.7(r).)

(b) The Annual Plan.

(1) The first PHA fiscal year that is covered by the requirements of this part as amended on December 22, 2000 is the PHA fiscal year that begins October 1, 2001.

(2) For all PHAs, the first Annual Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of the first Annual Plan, all subsequent Annual Plans will be due no later than 75 days before the commencement of their fiscal year.

903.6 What information must a PHA provide in the 5-Year Plan?

(a) A PHA must include in its 5-Year Plan a statement of:

(1) The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan. For HUD, the PHA and the public to better measure the success of the PHA in meeting its goals and objectives, the PHA must adopt quantifiable goals and objectives for serving those needs wherever possible.

(3) A statement about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

(b) After submitting its first 5-Year Plan, a PHA in its succeeding 5-Year Plans, must address:

(1) The PHA's mission, goals and objectives for the next 5 years; and

(2) The progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan.

903.7 What information must a PHA provide in the Annual Plan?

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan due date, of the information, described in this section that must be part of the first Annual Plan submission, and any additional instructions or directions that may be necessary to prepare and submit the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. The information that the PHA must submit for HUD approval under the Annual Plan includes the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these plan components and that provide no discretion on the part of the PHA in implementation of the requirements. The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) A statement of housing needs.

(1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families meeting the definition of extremely low-income families in 24 CFR 5.603;

(ii) Elderly families and families with disabilities;

(iii) Households with individuals with disabilities and households of various races and ethnic groups residing in the jurisdiction or on the waiting list.

(2) A PHA must make reasonable efforts to identify the housing needs of each of the groups listed in paragraph (a)(1) of this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data.

(i) The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units and location.

(ii) The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs, and the PHA's reasons for choosing its strategy.

(b) A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions. This statement must describe the PHA's policies that govern resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act, as well as any unit assignment policies for public housing. This statement must include the following information:

(1) Deconcentration Policy. The PHA's deconcentration policy applicable to public housing, as described in 903.2(a).

(2) Waiting List Procedures. The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing developments. The statement must address any site-based waiting lists, as authorized by section 6(s) of the 1937 Act (42 U.S.C. 1437d(s)), for public housing. Section 6(s) of the 1937 Act permits PHAs to establish a system of site-based waiting lists for public housing that is consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where:

(i) The PHA regularly submits required occupancy data to HUD's Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

(ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site;

(iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be inconsistent with a pending complaint brought by HUD;

(iv) The PHA includes reasonable measures to assure that adoption of site-based waiting lists is consistent with affirmatively furthering fair housing, such as reasonable marketing activities to attract applicants regardless of race or ethnicity;

(v) The PHA provides for review of its site-based waiting list policy to determine if the policy is consistent with civil rights laws and certifications through the following steps:

(A) As part of the submission of the Annual Plan, the PHA shall assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon MTCS occupancy data that has been confirmed to be complete and accurate by an independent audit (which may be the annual independent audit) or is otherwise satisfactory to HUD;

(B) At least every three years the PHA uses independent testers or other means satisfactory to HUD, to assure that the site-based waiting list is not being implemented in a discriminatory manner, and that no patterns or practices of discrimination exist, and providing the results to HUD;

(C) Taking any steps necessary to remedy the problems surfaced during the review; and

(D) Taking the steps necessary to affirmatively further fair housing.

(3) Other admissions policies. The PHA's admission policies that include any other PHA policies that govern eligibility, selection and admissions for the public housing (see part 960 of this title) and tenant-based assistance programs (see part 982, subpart E of this title). (The information requested on site-based waiting lists and deconcentration is applicable only to public housing.)

(c) A statement of financial resources. This statement must address the financial resources that are available to the PHA for the support of Federal public housing and tenant-based assistance programs administered by the PHA during the plan year. The statement must include a listing, by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned uses for the resources.

(d) A statement of the PHA's rent determination policies. This statement must describe the PHA's basic discretionary policies that govern rents charged for public housing units, applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement also shall cover any discretionary minimum tenant rents and payment standard policies.

(e) A statement of the PHA's operation and management.

(1) This statement must list the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA.

(2) The policies listed in this statement must include a description of any measures necessary for the prevention or eradication of pest infestation. Pest infestation includes cockroach infestation.

(3) This statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(4) The information requested on a PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information requested on PHA program management and listing of administered programs applies to public housing and tenant-based assistance.

(f) A statement of the PHA grievance procedures. This statement describes the grievance and informal hearing and review procedures that the PHA makes available to its residents and applicants. These procedures include public housing grievance procedures and tenant-based assistance informal review procedures for applicants and hearing procedures for participants.

(g) A statement of capital improvements needed. With respect to public housing only, this statement describes the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken in the year in question and their estimated costs, and any other information required for participation in the Capital Fund. PHAs also are required to include 5-Year Plans covering large capital items.

(h) A statement of any demolition and/or disposition.

(1) Plan for Demolition/Disposition. With respect to public housing only, a description of any public housing development, or portion of a public housing development, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(2) Interim Plan for Demolition/Disposition.

(i) Before submission of the first Annual Plan, a PHA may submit an interim PHA Annual Plan solely for demolition/disposition. The interim plan must provide:

(A) The required description of the action to be taken;

(B) A certification of consistency with the Consolidated Plan;

(C) A description of how the plan is consistent with the Consolidated Plan;

(D) A relocation plan that includes the availability of units in the area and adequate funding; and

(E) Confirmation that a public hearing was held on the proposed action and that the resident advisory board was consulted.

(ii) Interim plans for demolition/disposition are subject to PHA Plan procedural requirements in this part (see 903.13, 903.15, 903.17, 903.19, 903.21, 903.23, 903.25), with the following exception. If a resident advisory board has not yet been formed, the PHA may seek a waiver of the requirement to consult with the resident advisory board on the grounds that organizations that adequately represent residents for this purpose were consulted.

(iii) The actual application for demolition or disposition may be submitted at the same time as submission of the interim plan or at a later date.

(i) A statement of the public housing developments designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.

(1) With respect to public housing only, this statement identifies any public housing developments owned, assisted, or operated by the PHA, or any portion of these developments, that:

(i) The PHA has designated for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities; and

(ii) The PHA will apply for designation for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities as provided by section 7 of the 1937 Act (42 U.S.C. 1437e).

(2) The designated housing application and approval process is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(j) A statement of the conversion of public housing to tenant-based assistance.

(1) This statement describes:

(i) Any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z-5);

(ii) The status of any building or buildings that the PHA may be required to convert to tenant-based assistance under section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 14371 note); or

(iii) The PHA's plans to voluntarily convert under section 22 of the 1937 Act (42 U.S.C. 1437t).

(2) The statement also must include an analysis of the developments or buildings required to be converted under section 33.

(3) For both voluntary and required conversions, the statement must include the amount of assistance received commencing in Federal Fiscal Year 1999 to be used for rental assistance or other housing assistance in connection with such conversion.

(4) The application and approval processes for required or voluntary conversions are separate approval processes. Approval of the PHA Plan does not constitute approval of these activities.

(5) The information required under this paragraph (j) of this section is applicable to public housing and only that tenant-based assistance which is to be included in the conversion plan.

(k) A statement of homeownership programs administered by the PHA.

(1) This statement describes:

(i) Any homeownership programs administered by the PHA under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y));

(ii) Any homeownership programs administered by the PHA under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h));

(iii) An approved HOPE I program (42 U.S.C. 1437aaa); or

(iv) Any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z-4).

(2) The application and approval process for homeownership under the programs described in paragraph (k) of this section, with the exception of the section 8(y) homeownership program, are separate processes. Approval of the PHA Plan does not constitute approval of these activities.

(l) A statement of the PHA's community service and self-sufficiency programs.

(1) This statement describes:

(i) Any PHA programs relating to services and amenities coordinated, promoted or provided by the PHA for assisted families, including programs provided or offered as a result of the PHA's partnership with other entities;

(ii) Any PHA programs coordinated, promoted or provided by the PHA for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities under section 3 of the Housing and Community Development Act of 1968 and under requirements for the Family Self-Sufficiency Program and others. The description of programs offered shall include the program's size (including required and actual size of the Family Self-Sufficiency program) and means of allocating assistance to households.

(iii) How the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act (42 U.S.C. 1437j(c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing and tenant-based assistance recipients resulting from welfare program requirements. PHAs must address any cooperation agreements, as described in section 12(d)(7) of the 1937 Act (42 U.S.C. 1437j(d)(7)), that the PHA has entered into or plans to enter into.

(2) The information required by paragraph (l) of this section is applicable to both public housing and tenant-based assistance, except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

(m) A statement of the PHA's safety and crime prevention measures.

(1) With respect to public housing only, this statement describes the PHA's plan for safety and crime prevention to ensure the safety of the public housing residents that it serves. The plan for safety and crime prevention must be established in consultation with the police officer or officers in command of the appropriate precinct or police departments. The plan also must provide, on a development-by-development or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(2) The statement regarding the PHA's safety and crime prevention plan must include the following information:

(i) A description of the need for measures to ensure the safety of public housing residents;

(ii) A description of any crime prevention activities conducted or to be conducted by the PHA; and

(iii) A description of the coordination between the PHA and the appropriate police precincts for carrying out crime prevention measures and activities.

(3) If the PHA expects to receive drug elimination program grant funds, the PHA must submit, in addition to the information required by paragraph (m)(1) of this section, the plan required by HUD's Public Housing Drug Elimination Program regulations (see part 761 of this title).

(4) If HUD determines at any time that the security needs of a public housing development are not being adequately addressed by the PHA's plan, or that the local police precinct is not assisting the PHA with compliance with its crime prevention measures as described in the Annual Plan, HUD may mediate between the PHA and the local precinct to resolve any issues of conflict.

(5) A statement of any domestic violence, dating violence, sexual assault, and stalking prevention programs:

(i) A description of any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

(ii) Any activities, services, or programs provided or offered by a PHA that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and

(iii) Any activities, services, or programs provided or offered by a PHA to prevent domestic violence, dating violence, sexual assault, or stalking, or to enhance victim safety in assisted families.

(n) A statement of the PHA's policies and rules regarding ownership of pets in public housing. This statement describes the PHA's policies and requirements pertaining to the ownership of pets in public housing. The policies must be in accordance with section 31 of the 1937 Act (42 U.S.C. 1437a-3).

(o) Civil rights certification.

(1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and other applicable Federal civil rights laws. The PHA must also certify that it will affirmatively further fair housing pursuant to §§ 5.151 and 5.152 of this title.

(2) The certification is applicable to the 5-Year Plan and the Annual Plan.

(p) Recent results of PHA's fiscal year audit. This statement provides the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the 1937 Act (42 U.S.C. 1437c(h)).

(q) A statement of asset management. To the extent not covered by other components of the PHA Annual Plan, this statement describes how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(r) Additional information to be provided.

(1) For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year Plan;

(2) A PHA must identify the basic criteria the PHA will use for determining:

(i) A substantial deviation from its 5-Year Plan; and

(ii) A significant amendment or modification to its 5-Year Plan and Annual Plan.

(3) A PHA must include such other information as HUD may request of PHAs, either on an individual or across-the-board basis. HUD will advise the PHA or PHAs of this additional information through advance notice.

903.9 May HUD request additional information in the Annual Plan of a troubled PHA?

HUD may request that a PHA that is at risk of being designated as troubled or is designated as troubled in accordance with section 6(j)(2) of the 1937 Act (42 U.S.C. 1437d(j)(2)), the Public Housing Management Assessment Program (part 901 of this title) or the Public Housing Assessment System (part 902 of this chapter) include its

operating budget. The PHA also must include or reference any applicable memorandum of agreement with HUD or any plan to improve performance, and such other material as HUD may prescribe.

903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled in accordance with section 6(j)(2) of the 1937 Act; and

(3) PHAs that only administer tenant-based assistance and do not own or operate public housing.

(b) All streamlined plans must provide information on how the public may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions.

(c) A streamlined plan must include the information provided in this paragraph (c). The Secretary may reduce the information requirements of streamlined Plans further, with adequate notice.

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year. The information required by 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y).

(2) For small PHAs that are not designated as troubled (see 902.67(c)) or that are not at risk of being designated as troubled (see 902.67(b)(4) of this chapter) under section 6(j)(2) of the 1937 Act, the requirements for streamlined Annual Plans are described in 903.12

(3) For PHAs that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by 903.7(a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r).

903.12 What are the streamlined Annual Plan requirements for small PHAs?

(a) General. PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled (see 902.67(c) of this chapter) or that are not at risk of being designated as troubled (see 902.67(b)(4)) under section 6(j) of the 1937 Act may submit streamlined Annual Plans in accordance with this section.

(b) Streamlined Annual Plan requirements for fiscal years in which its 5-Year Plan is also due. For the fiscal year in which its 5-Year Plan is also due, the streamlined Annual Plan of the small PHA shall consist of the information required by 903.7(a), (b), (c), (d), (g), (h), (k), (o) and (r). If the PHA wishes to use the project-based voucher program, the streamlined Annual Plan of the small PHA must also include a statement of the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan. The information required by 903.7(a) must be included only to the extent it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance waiting lists. The information required by 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act.

(c) Streamlined Annual Plan requirements for all other fiscal years. For all other fiscal years, the streamlined Annual Plan must include: (1) The information required by 903.7(g) and (o) and, if applicable, 903.7(b)(2) with respect to site-based waiting lists and 903.7(k)(1)(i) with respect to homeownership programs under section 8(y) of the 1937 Act; zz(2) If the PHA wishes to use the project-based voucher program, a statement of the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan; and (3) A certification from the PHA that lists the policies and programs covered by 903.7(a), (b), (c), (d), (h), (k), and (r) that the PHA has revised since submission of its last Annual Plan and provides assurance by the PHA that:

(i) The Resident Advisory Board had an opportunity to review and comment on the changes to the policies and programs before implementation by the PHA;

(ii) The changes were duly approved by the PHA board of directors (or similar governing body); and

(iii) The revised policies and programs are available for review and inspection at the principal office of the PHA during normal business hours.

903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?

(a) A Resident Advisory Board refers to a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(2) The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

(b) Each PHA must establish one or more Resident Advisory Boards, as provided in paragraph (b) of this section.

(1) If a jurisdiction-wide resident council exists that complies with the tenant participation regulations in part 964 of this title, the PHA shall appoint the jurisdiction-wide resident council or the council's representatives as the Resident Advisory Board. If the PHA makes such appointment, the members of the jurisdiction-wide resident council or the council's representatives shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where such representation is required under paragraph (b)(2) of this section.

(2) If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on one or more Resident Advisory Boards. If the PHA makes such appointment, the PHA may require that the resident councils choose a limited number of representatives.

(3) Where the PHA has a tenant-based assistance program of significant size (where tenant-based assistance is 20% or more of assisted households), the PHA shall assure that the Resident Advisory Board (or Boards) has reasonable representation of families receiving tenant-based assistance and that a reasonable process is undertaken to choose this representation.

(4) Where or to the extent that resident councils that comply with the tenant participation regulations do not exist, the PHA shall appoint Resident Advisory Boards or Board members as needed to adequately reflect and represent the interests of residents of such developments; provided that the PHA shall provide reasonable notice to such residents and urge that they form resident councils with the tenant participation regulations.

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and any significant amendment or modification to the Annual Plan, as provided in 903.21 of this title.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.

(2) Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan.

903.15 What is the relationship of the public housing agency plans to the Consolidated Plan and a PHA's Fair Housing Requirements?

(a) The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located.

(1) The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

(2) For State agencies that are PHAs, the applicable Consolidated Plan is the State Consolidated Plan.

(b) A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Consolidated Plan process, by the State or local officials, as applicable.

(c) *Fair housing requirements.* A PHA is obligated to affirmatively further fair housing in its operating policies, procedures, and capital activities. All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and other civil rights laws and regulations and with a PHA's plans to affirmatively further fair housing. The PHA may not impose any specific income or racial quotas for any development or developments.

(1) *Nondiscrimination.* A PHA must carry out its PHA Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Fair Housing Act. A PHA may not assign housing to persons in a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status, or national origin for purposes of segregating populations.

(2) Affirmatively furthering fair housing. A PHA's policies should be designed to reduce the concentration of tenants and other assisted persons by race, national origin, and disability. Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy.

(i) HUD regulations provide that PHAs must take steps to affirmatively further fair housing. PHA policies should include affirmative steps to overcome the effects of discrimination and the effects of conditions that resulted in limiting participation of persons because of their race, national origin, disability, or other protected class.

(ii) Such affirmative steps may include, but are not limited to, marketing efforts, use of nondiscriminatory tenant selection and assignment policies that lead to desegregation, additional applicant consultation and information, provision of additional supportive services and amenities to a development (such as supportive services that enable an individual with a disability to transfer from an institutional setting into the community), and engagement in ongoing coordination with state and local disability agencies to provide additional community-based housing opportunities for individuals with disabilities and to connect such individuals with supportive services to enable an individual with a disability to transfer from an institutional setting into the community.

(3) Validity of certification. (i) A PHA's certification under § 903.7(o) will be subject to challenge by HUD where it appears that a PHA:

(A) Fails to meet the affirmatively furthering fair housing requirements at 24 CFR 5.150 through 5.152

(B) Takes action that is materially inconsistent with its obligation to affirmatively further fair housing; or

(C) Fails to meet the fair housing, civil rights, and affirmatively furthering fair housing requirements in 24 CFR 903.7(o).

(ii) If HUD challenges the validity of a PHA's certification, HUD will do so in writing specifying the deficiencies, and will give the PHA an opportunity to respond to the particular challenge in writing. In responding to the specified deficiencies, a PHA must establish, as applicable, that it has complied with fair housing and civil rights laws and regulations, or has remedied violations of fair housing and civil rights laws and regulations, and has adopted policies and undertaken actions to affirmatively further fair housing, including, but not limited to, providing a full range of housing opportunities to applicants and tenants in a nondiscriminatory manner.

In responding to the PHA, HUD may accept the PHA's explanation and withdraw the challenge, undertake further investigation, or pursue other remedies available under law. HUD will seek to obtain voluntary corrective action consistent with the specified deficiencies. In determining whether a PHA has complied with its certification, HUD will review the PHA's circumstances relevant to the specified deficiencies, including characteristics of the population served by the PHA; characteristics of the PHA's existing housing stock; and decisions, plans, goals, priorities, strategies, and actions of the PHA, including those designed to affirmatively further fair housing.

903.17 What is the process for obtaining public comment on the plans?

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(b) Not later than 45 days before the public hearing is to take place, the PHA must:

(1) Make the proposed PHA plan(s), the required attachments and documents related to the plans, and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

(2) Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?

A PHA may adopt its 5-Year Plan or its Annual Plan and submit the plan to HUD for approval only after:

(a) The PHA has conducted the public hearing;

(b) The PHA has considered all public comments received on the plan;

(c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

903.21 May the PHA amend or modify a plan?

(a) A PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a significant amendment or modification, as defined in 903.7(r)(2), the PHA:

(1) May not adopt the amendment or modification until the PHA has duly called a meeting of its board of directors (or similar governing body) and the meeting, at which the amendment or modification is adopted, is open to the public; and

(2) May not implement the amendment or modification, until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in 903.23.

(b) Each significant amendment or modification to a plan submitted to HUD is subject to the requirements of 903.13, 903.15, and 903.17.

903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

(a) Review of the plan. When the PHA submits its Annual Plan to HUD, including any significant amendment or modification to the plan, HUD reviews the plan to determine whether:

(1) The plan provides all the information that is required to be included in the plan;

(2) The plan is consistent with the information and data available to HUD;

(3) The plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(4) The plan is not prohibited or inconsistent with the 1937 Act or any other applicable Federal law.

(b) Scope of HUD review. HUD's review of the Annual Plan (and any significant amendments or modifications to the plan) will be limited to the information required by 903.7(b), (g), (h), and (o), and any other element of the PHA's Annual Plan that is challenged.

(c) Disapproval of the plan.

(1) HUD may disapprove a PHA plan, in its entirety or with respect to any part, or disapprove any significant amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any significant amendment or modification to the plan:

(i) Does not provide all the information that is required to be included in the plan;

(ii) Is not consistent with the information and data available to HUD;

(iii) Is not consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; or

(iv) Is not consistent with applicable Federal laws and regulations.

(2) Not later than 75 days after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD will issue written notice to the PHA if the plan or a significant amendment or modification has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

(3) If HUD fails to issue the notice of disapproval on or before the 75th day after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD shall be considered to have determined that all elements or components of the plan required to be submitted and that were submitted, and to be reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(4) The provisions of paragraph (b)(3) of this section do not apply to troubled PHAs. The plan of a troubled PHA must be approved or disapproved by HUD through written notice.

(d) Designation of due date as submission date for first plan submissions. For purposes of the 75-day period described in paragraph (b) of this section, the first 5-year and Annual Plans submitted by a PHA will be considered to have been submitted no earlier than the due date as provided in 903.5.

(e) Public availability of the approved plan. Once a PHA's plan has been approved, a PHA must make the approved plan and the required attachments and documents related to the plan, available for review and inspection, at the principal office of the PHA during normal business hours.

(f) Recordkeeping. PHAs must maintain records reflecting actions to affirmatively further fair housing pursuant to §§ 5.151, 5.152, and 903.7(o) of this title.

903.25 How does HUD ensure PHA compliance with its plan?

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

PART 908 ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

908.101 Purpose.

The purpose of this part is to require Public Housing Agencies (PHAs), including Moving-to-Work (MTW) PHAs, that operate Public Housing, Indian Housing, or Section 8 Rental Certificate, Housing Choice Voucher (HCV), Rental Voucher, and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. These electronically submitted data are required for HUD forms: HUD–50058, including the Family Self-Sufficiency (FSS) Addendum. Applicable program entities must retain at a minimum, the last three years of the form HUD–50058, and supporting documentation, during the term of each assisted lease, and for a period of at least 3 years from the end of participation (EOP) date, to support billings to HUD and to permit an effective audit. Electronic retention of form HUD–50058 and HUD–50058–FSS and supporting documentation fulfills the record retention requirement under this section.

908.104 Requirements.

(a) Automated HAs. Housing agencies that currently use automated software packages to transmit Forms HUD-50058 and HUD-50058-FSS information by tape or diskette to the Department's data processing contractor must convert to telephonic electronic transmission of that data in a HUD specified format by June 30, 1995.

(b) Nonautomated HAs. Housing agencies that currently prepare and transmit the HUD-50058 and HUD-50058-FSS information to HUD paper must:

(1) Complete a vendor search and obtain either:

(i) The necessary hardware and software required to develop and maintain an in-house automated data processing system (ADP) used to generate electronic submission of the data for these forms via telephonic network; or

(ii) A service contract for the operation of an automated system to generate electronic submission of the data for these forms via telephonic network;

(2) Complete their data loading; and

(3) Begin electronic transmission by March 2, 1996.

(c) Electronic transmission of data. Electronic transmission of data consists of submission of all required data fields (correctly formatted) from the forms HUD-050058 and HUD-50058-FSS telephonically, in accordance with HUD instructions. Regardless of whether an HA obtains the ADP system itself or contracts with a service bureau to provide the system, the software must be periodically updated to incorporate changes or revisions in legislation, regulations, handbooks, notices, or HUD electronic transmission data format requirements.

(d) Service contract. HAs that determine that the purchase of hardware and/or software is not cost effective may contract out the electronic data transmission function to organizations that provide such services, including, but not limited to the following organizations: local management associations and management agents with centralized facilities. HAs that contract out the electronic transmission function must retain the ability to monitor the day-to-day operations of the project at the HA site and be able to demonstrate the ability to the relevant HUD Field Office.

(e) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Department may approve transmission of the data by tape or diskette if it determines that the cost of telephonic transmission would be excessive.

908.108 Cost.

(a) General. The costs of the electronic transmission of the correctly formatted data, including either the purchase and maintenance of computer hardware or software, or both, the cost of contracting for those services, or the cost of centralizing the electronic transmission function, shall be considered Section 8 Administrative expenses, or

eligible public and Indian housing operating expenses that can be included in the public and Indian housing operating budget. At the HA's option, the cost of the computer software may include service contracts to provide maintenance or training, or both.

(b) Sources of funding. For public and Indian housing, costs may be covered from operating subsidy for which the HA is already eligible, or the initial cost may be covered by funds received by the HA under HUD's Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP). For Section 8 programs, the costs may be covered from ongoing administrative fees or the Section 8 operating reserve.

908.112 Extension of time.

The HUD Field Office may grant an HA an extension of time, of a reasonable period, for implementation of the requirements of 908.104, if it determines that such electronic submission is infeasible because of one of the following:

(a) Lack of staff resources;

(b) Insufficient financial resources to purchase the required hardware, software or contractual services; or

(c) Lack of adequate infrastructure, including, but not limited to, the inability to obtain telephone service to transmit the required data.

PART 982 SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

Subpart A General Information

982.1 Programs: Purpose and structure.

(a) *General description*. (1) In the HUD Housing Choice Voucher (HCV) program, HUD pays rental subsidies so eligible families can afford decent, safe, and sanitary housing. The HCV program is generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the program.

(2) Families select and rent units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family. A PHA may not approve a tenancy unless the rent is reasonable.

(3) Subsidy in the HCV program is based on a local "payment standard" that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

(b) Tenant-based and project-based assistance. (1) Section 8 assistance may be 'tenant-based' or 'project-based'. In project-based programs, rental assistance is paid for families who live in specific housing developments or units. With tenant-based assistance, the assisted unit is selected by the family. The family may rent a unit anywhere in the United States in the jurisdiction of a PHA that runs a voucher program.

(2) To receive tenant-based assistance, the family selects a suitable unit. After approving the tenancy, the PHA enters into a contract to make rental subsidy payments to the owner to subsidize occupancy by the family. The PHA contract with the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued assistance so long as the family is complying with program requirements.

982.2 Applicability.

Part 982 contains the program requirements for the tenant-based housing assistance program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based program is the HCV program.

982.3 HUD.

The HUD field offices have been delegated responsibility for day-to-day administration of the program by HUD. In exercising these functions, the field offices are subject to HUD regulations and other HUD requirements issued by HUD headquarters. Some functions are specifically reserved to HUD headquarters.

982.4 Definitions.

(a) *Definitions found elsewhere*—(1) *General definitions*. The following terms are defined in part 5, subpart A of this title: 1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant's control, public housing, Section 8, and violent criminal activity.

(2) *Definitions concerning family income and rent.* The terms "adjusted income," "annual income," "extremely low income family," "tenant rent," "total tenant payment," "utility allowance," "utility reimbursement," and "welfare assistance" are defined in part 5, subpart F of this title. The definitions of "tenant rent" and "utility reimbursement" in part 5, subpart F of this title do not apply to the HCV program under part 982.

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

Absorption. For purposes of subpart H,

the point at which a receiving PHA starts making assistance payments with funding under its consolidated ACC, rather than billing the initial PHA.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See §982.152.

Administrative fee reserve (formerly "operating reserve"). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See §982.155.

Administrative plan. The plan that describes PHA policies for administration of the HCV program. See §982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in the tenant-based program.

Applicant (applicant family). A family that has applied for admission to the HCV program but is not yet a program participant.

Budget authority. An amount authorized and appropriated by the Congress for payment to PHAs under the HCV program. For each funding increment in the program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

Common space. In shared housing: Space available for use by the assisted family and other occupants of the unit.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see §982.606 to §982.609.

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to the HCV program.

Cooperative. Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.

Cooperative member. A family of which one or more members owns membership shares in a cooperative.

Domicile. The legal residence of the household head or spouse as determined in accordance with State and local law.

Downpayment assistance grant. A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for purchase of the home or reasonable and customary closing costs required in connection with purchase of the home.

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the Federal Register in accordance with 24 CFR part 888.

Family. A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program. See "family composition" at §982.201(c).

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see §982.515(b).

Family self-sufficiency program (FSS program). The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see §982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

First-time homeowner. In the homeownership option: A family of which no member owned any present ownership interest in a residence of any family member during the three years before commencement of homeownership assistance for the family. The term "first-time homeowner" includes a single parent or displaced homemaker (as those terms are defined in 12 U.S.C. 12713) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see §982.610 to §982.614.

HAP contract. Housing assistance payments contract.

Home. In the homeownership option: A dwelling unit for which the PHA pays homeownership assistance.

Homeowner. In the homeownership option: A family of which one or more members owns title to the home.

Homeownership assistance. Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by a PHA for a family: monthly homeownership assistance payments, or a single downpayment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

Homeownership expenses. In the homeownership option: A family's allowable monthly expenses for the home, as determined by the PHA in accordance with HUD requirements (see §982.635).

Homeownership option. Assistance for a homeowner or cooperative member under §982.625 to §982.641. A special housing type.

Housing assistance payment. The monthly assistance payment by a PHA, which includes:

(1) A payment to the owner for rent to the owner under the family's lease; and

(2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the HCV program. See §982.401.

Initial PHA. In portability, the term refers to both:

(1) a PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and

(2) a PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Interest in the home. In the homeownership option:

(1) In the case of assistance for a homeowner, "interest in the home" includes title to the home, any lease or other right to occupy the home, or any other present interest in the home.

(2) In the case of assistance for a cooperative member, "interest in the home" includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

Jurisdiction. The area in which the PHA has authority under State and local law to administer the program.

Lease. (1) A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

(2) In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA. For purposes of this part 982, the cooperative is the Section 8 "owner" of the unit, and the cooperative member is the Section 8 "tenant."

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see §982.620 and §982.621.

Manufactured home space. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See §982.622 to §982.624.

Membership shares. In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular unit in the cooperative, and the right to participate in management of the housing.

Merger date. October 1, 1999, which is the effective date of the merger of the two tenant-based programs (the housing voucher and housing certificate programs) into the Housing Choice Voucher (HCV) program.

Notice of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the Federal Register document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

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

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

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

PHA plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD in accordance with part 903 of this chapter.

Portability. Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Present homeownership interest. In the homeownership option: "Present ownership interest" in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership

shares in a cooperative. "Present ownership interest" in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

Program. The Section 8 HCV program under this part.

Program receipts. HUD payments to the PHA under the consolidated ACC, and any other amounts received by the PHA in connection with the program.

Public housing agency (PHA). PHA includes both:

(1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), and

(2) Any of the following:

(i) A consortium of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortium members);

(ii) Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) on October 21, 1998; or

(iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

Reasonable rent. A rent to owner that is not more than rent charged:

(1) For comparable units in the private unassisted market; and

(2) For comparable unassisted units in the premises.

Receiving PHA. In portability: A PHA that receives a family selected for participation in the HCV program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

Renewal units. The number of units, as determined by HUD, for which funding is reserved on HUD books for a PHA's program. This number is used is calculating renewal budget authority in accordance with §982.102.

Rent to owner. The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

Residency preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see §982.615 to §982.618.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see §982.602 to §982.605.

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

Special housing types. See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group home, shared housing, manufactured home (including manufactured home space rental), cooperative housing (rental assistance for cooperative member) and homeownership option (homeownership assistance for cooperative member or first-time homeowner).

Statement of homeowner obligations. In the homeownership option: The family's agreement to comply with program obligations.

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. The term on the family's voucher stops from the date that the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Utility reimbursement. The portion of the housing assistance payment which exceeds the amount of the rent to owner. (See §982.514(b)).

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher (rental voucher). A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

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

Welfare-to-work (WTW) families. Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

982.5 Notices required by this part.

Where part 982 requires any notice to be given by the PHA, the family or the owner, the notice must be in writing.

Subpart B HUD Requirements and PHA Plan for Administration of Program

982.51 PHA authority to administer program.

(a) The PHA must have authority to administer the program. The PHA must provide evidence, satisfactory to HUD, of its status as a PHA, of its authority to administer the program, and of the PHA jurisdiction.

(b) The evidence submitted by the PHA to HUD must include enabling legislation and a supporting legal opinion satisfactory to HUD. The PHA must submit additional evidence when there is a change that affects its status as a PHA, its authority to administer the program, or its jurisdiction.

982.52 HUD requirements.

(a) The PHA must comply with HUD regulations and other HUD requirements for the program. HUD requirements are issued by HUD headquarters, as regulations, *Federal Register* notices or other binding program directives.

(b) The PHA must comply with the consolidated ACC and the PHA's HUD-approved applications for program funding.

982.53 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.

(a) The tenant-based program requires compliance with all equal opportunity requirements imposed by contract or federal law, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq.

(b) *Civil rights certification.* The PHA must submit a signed certification to HUD that:

(1) The PHA will administer the program in conformity with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

(2) The PHA will affirmatively further fair housing in the administration of the program.

(c) *Obligation to affirmatively further fair housing.* The PHA shall affirmatively further fair housing as required by 903.7(o) of this title.

(d) *State and local law.* Nothing in part 982 is intended to preempt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder. However, such State and local laws shall not change or affect

any requirement of this part, or any other HUD requirements for administration or operation of the program.

(e) *Protection for victims of domestic violence, dating violence, sexual assault, or stalking*. The PHA must apply the requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD's regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the Notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).

982.54 Administrative plan.

(a) The PHA must adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements. The administrative plan and any revisions of the plan must be formally adopted by the PHA Board of Commissioners or other authorized PHA officials. The administrative plan states PHA policy on matters for which the PHA has discretion to establish local policies.

(b) The administrative plan must be in accordance with HUD regulations and requirements. The administrative plan is a supporting document to the PHA plan (part 903 of this title) and must be available for public review. The PHA must revise the administrative plan if needed to comply with HUD requirements.

(c) The PHA must administer the program in accordance with the PHA administrative plan.

(d) The PHA administrative plan must cover PHA policies on these subjects:

(1) Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list;

(2) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions of the voucher term. If the PHA decides to allow extensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions, and how the PHA determines the length of any extension;

(3) Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families;

(4) Occupancy policies, including:

(i) Definition of what group of persons may qualify as a 'family';

(ii) Definition of when a family is considered to be "continuously assisted";

(iii) Standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553;

(5) Encouraging participation by owners of suitable units located outside areas of low income or minority concentration;

(6) Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit;

(7) Providing information about a family to prospective owners;

(8) Disapproval of owners;

(9) Subsidy standards;

(10) Family absence from the dwelling unit;

(11) How to determine who remains in the program if a family breaks up;

(12) Informal review procedures for applicants;

(13) Informal hearing procedures for participants;

(14) The process for establishing and revising payment standards, including policies on administering decreases in the payment standard during the HAP contract term (see §982.505(d)(3));

(15) The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract);

(16) Special policies concerning special housing types in the program (e.g., use of shared housing);

(17) Policies concerning payment by a family to the PHA of amounts the family owes the PHA;

(18) Interim redeterminations of family income and composition;

(19) Restrictions, if any, on the number of moves by a participant family (see 982.3540(c));

(20) Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve;

(21) Procedural guidelines and performance standards for conducting required HQS inspections;

(22) PHA screening of applicants for family behavior or suitability for tenancy; and

(23) Policies concerning application of Small Area FMRs to project-based voucher units (see §888.113(h)).

Subpart C Funding and PHA Application for Funding

982.101 Allocation of funding.

(a) *Allocation of funding.* HUD allocates available budget authority for the tenant-based assistance program to HUD field offices.

(b) *Section 213(d) allocation.* (1) Section 213(d) of the HCD Act of 1974 (42 U.S.C. 1439) establishes requirements for allocation of assisted housing budget authority. Some budget authority is exempt by law from allocation under section 213(d). Unless exempted by law, budget authority for the tenant-based programs must be allocated in accordance with section 213(d).

(2) Budget authority subject to allocation under section 213(d) is allocated in accordance with 24 CFR part 791, subpart D. There are three categories of section 213(d) funding allocations under part 791 of this title:

(i) Funding retained in a headquarters reserve for purposes specified by law;

(ii) funding incapable of geographic formula allocation (e.g., for renewal of expiring funding increments); or

(iii) funding allocated by an objective fair share formula. Funding allocated by fair share formula is distributed by a competitive process.

(c) *Competitive process.* For budget authority that is distributed by competitive process, the Department solicits applications from PHAs by publishing one or more notices of funding availability (NOFAs) in the *Federal Register*. See 24 CFR part 12, subpart B; and 24 CFR 791.406. The NOFA explains how to apply for assistance, and specifies the criteria for awarding the assistance. The NOFA may identify any special program requirements for use of the funding.

982.102 Allocation of budget authority for renewal of expiring consolidated ACC funding increments.

(a) *Applicability.* This section applies to the renewal of consolidated ACC funding increments in the program (as described in 982.151(a)(2)) that expire after December 31, 1999 (including any assistance that the PHA has attached to units for project-based assistance under part 983 of this title). This section implements section 8(dd) of the 1937 Act (42 U.S.C. 1437f(dd)),

(b) *Renewal Methodology.* HUD will use the following methodology to determine the amount of budget authority to be allocated to a PHA for the renewal of expiring consolidated ACC funding increments in the program, subject to the availability of appropriated funds. If the amount of appropriated funds is not sufficient to provide the full amount of renewal funding for PHAs, as calculated in accordance with this section, HUD may establish a procedure to adjust allocations for the shortfall in funding.

(c) *Determining the amount of budget authority allocated for renewal of an expiring funding increment.* Subject to availability of appropriated funds, as determined by HUD, the amount of budget authority allocated by HUD to a PHA for renewal of each program funding increment that expires during a calendar year will be equal to:

(1) Number of renewal units. The number of renewal units assigned to the funding increment (as determined by HUD pursuant to paragraph (d) of this section); multiplied by

(2) Adjusted annual per unit cost. The adjusted annual per unit cost (as determined by HUD pursuant to paragraph (e) of this section).

(d) *Determining the number of renewal units.* (1) Number of renewal units. HUD will determine the total number of renewal units for a PHA's program as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated. The number of renewal units for a PHA's program will be determined as follows:

(i) Step 1: Establishing the initial baseline. HUD will establish a baseline number of units ('baseline') for each PHA program. The initial baseline equals the number of units reserved by HUD for the PHA program as of December 31, 1999.

(ii) Step 2: Establishing the adjusted baseline. The adjusted baseline equals the initial baseline with the following adjustments from the initial baseline as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated:

(A) Additional units. HUD will add to the initial baseline any additional units reserved for the PHA after December 31, 1999.

(B) Units removed. HUD will subtract from the initial baseline any units de-reserved by HUD from the PHA program after December 31, 1999.

(iii) Step 3: Determining the number of renewal units. The number of renewal units equals the adjusted baseline minus the number of units supported by contract funding increments that expire after the end of the calendar year.

(2) Funding increments. HUD will assign all units reserved for a PHA program to one or more funding increment(s).

(3) Correction of errors. HUD may adjust the number of renewal units to correct errors.

(e) *Determining the adjusted per unit cost.* HUD will determine the PHA's adjusted per unit cost when HUD processes the allocation of renewal funding for an expiring contract funding increment. The adjusted per unit cost calculated will be determined as follows:

(1) Step 1: Determining monthly program expenditure.

(i) Use of most recent HUD-approved year end statement. HUD will determine the PHA's monthly per unit program expenditure for the PHA certificate and voucher programs (including project-based assistance under such programs) under the consolidated ACC with HUD using data from the PHA's most recent HUD-approved year end statement.

(ii) Monthly program expenditure. The monthly program expenditure equals:

(A) Total program expenditure. The PHA's total program expenditure (the total of housing assistance payments and administrative costs) for the PHA fiscal year covered by the approved year end statement; divided by

(B) Total unit months leased. The total of unit months leased for the PHA fiscal year covered by the approved year end statement.

(2) Step 2: Determining annual per unit cost. HUD will determine the PHA's annual per unit cost. The annual per unit cost equals the monthly program expenditures (as determined under paragraph (e)(1)(ii) of this section) multiplied by 12.

(3) Step 3: Determining adjusted annual per unit cost.

(i) HUD will determine the PHA's adjusted annual per unit cost. The adjusted annual per unit cost equals the annual per unit cost (as determined under paragraph (e)(2) of this section) multiplied cumulatively by the applicable published Section 8 housing assistance payments program annual adjustment factors in effect during the period from the end of the PHA fiscal year covered by the approved year end statement to the time when HUD processes the allocation of renewal funding.

(ii) Use of annual adjustment factor applicable to PHA jurisdiction. For this purpose, HUD will use the annual adjustment factor from the notice published annually in the *Federal Register* pursuant to part 888 that is applicable to the jurisdiction of the PHA. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(iii) Use of annual adjustment factors in effect subsequent to most recent Year End Statement. HUD will use the Annual Adjustment Factors in effect during the time period subsequent to the time covered by the most recent HUD approved Year End Statement and the time of the processing of the contract funding increment to be renewed.

(iv) Special circumstances. At its discretion, HUD may modify the adjusted annual per unit cost based on receipt of a modification request from a PHA. The modification request must demonstrate that because of special circumstances application of the annual adjustment factor will not provide an accurate adjusted annual per unit cost.

(4) Correction of errors. HUD may correct for errors in the adjusted per unit cost.

(f) *Consolidated ACC amendment to add renewal funding.* HUD will reserve allocated renewal funding available to the PHA within a reasonable time prior to the expiration of the funding increment to be renewed and establish a new expiration date one-year from the date of such expiration.

(g) *Modification of allocation of budget authority*. (1) HUD authority to conform PHA program costs with PHA program finances through *Federal Register* notice. In the event that a PHA's costs incurred threaten to exceed budget authority and allowable reserves, HUD reserves the right, through *Federal Register* notice, to bring PHA program costs and the number of families served, in line with PHA program finances.

(2) HUD authority to limit increases of per unit cost through *Federal Register* notice. HUD may, by *Federal Register* notice, limit the amount or percentage of increases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(3) HUD authority to limit decreases to per unit costs through *Federal Register* notice. HUD may, by *Federal Register* notice, limit the amount or percentage of decreases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(4) Contents of *Federal Register* notice. If HUD publishes a *Federal Register* notice pursuant to paragraphs (g)(1), (g)(2) or (g)(3) of this section, it will describe the rationale, circumstances and procedures under which such modifications are implemented. Such circumstances and procedures shall, be consistent with the objective of enabling PHAs and HUD to meet program goals and requirements including but not limited to:

(i) Deconcentration of poverty and expanding housing opportunities;

(ii) Reasonable rent burden;

(iii) Income targeting;

(iv) Consistency with applicable consolidated plan(s);

(v) Rent reasonableness;

(vi) Program efficiency and economy;

(vii) Service to additional households within budgetary limitations; and

(viii) Service to the adjusted baseline number of families.

(5) Public consultation before issuance of *Federal Register* notice. HUD will design and undertake informal public consultation prior to issuing *Federal Register* notices pursuant to paragraphs (g)(1) or (g)(2) of this section.

(h) *Ability to prorate and synchronize contract funding increments*. Notwithstanding paragraphs (c) through (g) of this section, HUD may prorate the amount of budget authority allocated for the renewal of funding increments that expire on different dates throughout the calendar year. HUD may use such proration to synchronize the expiration dates of funding increments under the PHA's consolidated ACC.

(i) *Reallocation of budget authority.* If a PHA has performance deficiencies, such as a failure to adequately lease units, HUD may reallocate some of its budget authority to other PHAs. If HUD determines to reallocate budget authority, it will reduce the number of units reserved by HUD for the PHA program of the PHA whose budget authority is being reallocated and increase the number of units reserved by HUD for the PHAs whose programs are receiving the benefit of the reallocation, so that such PHAs can issue vouchers. HUD will publish

a notice in the *Federal Register* that will describe the circumstances and procedures for reallocating budget authority pursuant to this paragraph.

982.103 PHA application for funding.

(a) A PHA must submit an application for program funding to HUD at the time and place and in the form required by HUD.

(b) For competitive funding under a NOFA, the application must be submitted by a PHA in accordance with the requirements of the NOFA.

(c) The application must include all information required by HUD. HUD requirements may be stated in the HUD-required form of application, the NOFA, or other HUD instructions.

982.104 HUD review of application.

(a) *Competitive funding under NOFA.* For competitive funding under a NOFA, HUD must evaluate an application on the basis of the selection criteria stated in the NOFA, and must consider the PHA's capacity and capability to administer the program.

(b) *Approval or disapproval of PHA funding application*. (1) HUD must notify the PHA of its approval or disapproval of the PHA funding application.

(2) When HUD approves an application, HUD must notify the PHA of the amount of approved funding.

(3) For budget authority that is distributed to PHAs by competitive process, documentation of the basis for provision or denial of assistance is available for public inspection in accordance with 24 CFR 12.14(b).

(c) *PHA disqualification.* HUD will not approve any PHA funding application (including an application for competitive funding under a NOFA) if HUD determines that the PHA is disbarred or otherwise disqualified from providing assistance under the program.

Subpart D Annual Contributions Contract and PHA Administration of Program

982.151 Annual contributions contract.

(a) *Nature of ACC*. (1) An annual contributions contract (ACC) is a written contract between HUD and a PHA. Under the ACC, HUD agrees to make payments to the PHA, over a specified term, for housing assistance payments to owners and for the PHA administrative fee. The ACC specifies the maximum payment over the ACC term. The PHA agrees to administer the program in accordance with HUD regulations and requirements.

(2) HUD's commitment to make payments for each funding increment in the PHA program constitutes a separate ACC. However, commitments for all the funding increments in a PHA program are listed in one consolidated contractual document called the consolidated annual contributions contract (consolidated ACC). A single consolidated ACC covers funding for the PHA's HCV program.

(b) *Budget authority.* (1) Budget authority is the maximum amount that may be paid by HUD to a PHA over the ACC term of a funding increment. Before adding a funding increment to the consolidated ACC for a PHA program, HUD reserves budget authority from amounts authorized and appropriated by the Congress for the program.

(2) For each funding increment, the ACC specifies the term over which HUD will make payments for the PHA program, and the amount of available budget authority for each funding increment. The amount to be paid to the PHA during each PHA fiscal year (including payment from the ACC reserve account described in 982.154) must be approved by HUD.

982.152 Administrative fee.

(a) *Purposes of administrative fee.* (1) HUD may approve administrative fees to the PHA for any of the following purposes:

(i) Ongoing administrative fee;

(ii) Costs to help families who experience difficulty finding or renting appropriate housing under the program;

(iii) The following types of extraordinary costs approved by HUD:

(A) Costs to cover necessary additional expenses incurred by the PHA to provide reasonable accommodation for persons with disabilities in accordance with part 8 of this title (e.g., additional counselling costs), where the PHA is unable to cover such additional expenses from ongoing administrative fee income or the PHA administrative fee reserve;

(B) Costs of audit by an independent public accountant;

(C) Other extraordinary costs determined necessary by HUD Headquarters;

(iv) Preliminary fee (in accordance with paragraph (c) of this section);

(v) Costs to coordinate supportive services for families participating in the family self-sufficiency (FSS) program.

(2) For each PHA fiscal year, administrative fees are specified in the PHA budget. The budget is submitted for HUD approval. Fees are paid in the amounts approved by HUD. Administrative fees may only be approved or paid from amounts appropriated by the Congress.

(3) PHA administrative fees may only be used to cover costs incurred to perform PHA administrative responsibilities for the program in accordance with HUD regulations and requirements.

(b) *Ongoing administrative fee.* (1) The PHA ongoing administrative fee is paid for each program unit under HAP contract on the first day of the month. The amount of the ongoing fee is determined by HUD in accordance with Section 8(q)(1) of the 1937 Act (42 U.S.C. 1437f(q)(1)).

(2) If appropriations are available, HUD may pay a higher ongoing administrative fee for a small program or a program operating over a large geographic area. This higher fee level will not be approved unless the PHA demonstrates that it is efficiently administering its HCV program, and that the higher ongoing administrative fee is reasonable and necessary for administration of the program in accordance with HUD requirements.

(3) HUD may pay a lower ongoing administrative fee for PHA-owned units.

(c) *Preliminary fee.* (1) If the PHA was not administering a program of Section 8 tenant-based assistance prior to the merger date, HUD will pay a one-time fee in the amount of $500 in the first year the PHA administers a program. The fee is paid for each new unit added to the PHA program by the initial funding increment under the consolidated ACC.

(2) The preliminary fee is used to cover expenses the PHA incurs to help families who inquire about or apply for the program, and to lease up new program units.

(d) Reducing PHA administrative fee. HUD may reduce or offset any administrative fee to the PHA, in the amount determined by HUD, if the PHA fails to perform PHA administrative responsibilities correctly or adequately under the program (for example, PHA failure to enforce HQS requirements; or to reimburse a receiving PHA promptly under portability procedures).

982.153 PHA responsibilities.

The PHA must comply with the consolidated ACC, the application, HUD regulations and other requirements, and the PHA administrative plan.

982.154 ACC reserve account.

(a) HUD may establish and maintain an unfunded reserve account for the PHA program from available budget authority under the consolidated ACC. This reserve is called the 'ACC reserve account' (formerly 'project reserve'). There is a single ACC reserve account for the PHA program.

(b) The amount in the ACC reserve account is determined by HUD. HUD may approve payments for the PHA program, in accordance with the PHA's HUD-approved budget, from available amounts in the ACC reserve account.

982.155 Administrative fee reserve.

(a) The PHA must maintain an administrative fee reserve (formerly 'operating reserve') for the program. There is a single administrative fee reserve for the PHA program. The PHA must credit to the administrative fee reserve the total of:

(1) The amount by which program administrative fees paid by HUD for a PHA fiscal year exceed the PHA program administrative expenses for the fiscal year; plus

(2) Interest earned on the administrative fee reserve.

(b)(1) The PHA must use funds in the administrative fee reserve to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses (to the end of the last expiring funding increment under the consolidated ACC), the PHA may use these funds for other housing purposes permitted by State and local law. However, HUD may prohibit use of the funds for certain purposes.

(2) The PHA Board of Commissioners or other authorized officials must establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

(3) If the PHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the PHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses.

982.156 Depositary for program funds.

(a) Unless otherwise required or permitted by HUD, all program receipts must be promptly deposited with a financial institution selected as depositary by the PHA in accordance with HUD requirements.

(b) The PHA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.

(c) The PHA must enter into an agreement with the depositary in the form required by HUD.

(d)(1) If required under a written freeze notice from HUD to the depositary:

(i) The depositary may not permit any withdrawal by the PHA of funds held under the depositary agreement unless expressly authorized by written notice from HUD to the depositary; and

(ii) The depositary must permit withdrawals of such funds by HUD.

(2) HUD must send the PHA a copy of the freeze notice from HUD to the depositary.

982.157 Budget and expenditure.

(a) *Budget submission.* Each PHA fiscal year, the PHA must submit its proposed budget for the program to HUD for approval at such time and in such form as required by HUD.

(b) *PHA use of program receipts.* (1) Program receipts must be used in accordance with the PHA's HUD-approved budget. Such program receipts may only be used for:

(i) Housing assistance payments; and

(ii) PHA administrative fees.

(2) The PHA must maintain a system to ensure that the PHA will be able to make housing assistance payments for all participants within the amounts contracted under the consolidated ACC.

(c) *Intellectual property rights.* Program receipts may not be used to indemnify contractors or subcontractors of the PHA against costs associated with any judgment of infringement of intellectual property rights.

982.158 Program accounts and records.

(a) The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. The records must be in the form required by HUD, including requirements governing computerized or electronic forms of record-keeping. The PHA must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

(b) The PHA must furnish to HUD accounts and other records, reports, documents and information, as required by HUD. For provisions on electronic transmission of required family data, see 24 CFR part 908.

(c) HUD and the Comptroller General of the United States shall have full and free access to all PHA offices and facilities, and to all accounts and other records of the PHA that are pertinent to administration of the program, including the right to examine or audit the records, and to make copies. The PHA must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and shall provide any information or assistance needed to access the records.

(d) The PHA must prepare a unit inspection report.

(e) During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

(1) A copy of the executed lease;

(2) The HAP contract; and

(3) The application from the family.

(f) The PHA must keep the following records for at least three years:

(1) Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;

(2) An application from each ineligible family and notice that the applicant is not eligible;

(3) HUD-required reports;

(4) Unit inspection reports;

(5) Lead-based paint records as required by part 35, subpart B of this title.

(6) Accounts and other records supporting PHA budget and financial statements for the program;

(7) Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and

(8) Other records specified by HUD.

982.159 Audit requirements.

(a) The PHA must engage and pay an independent public accountant to conduct audits in accordance with HUD requirements.

(b) The PHA is subject to the audit requirements in 24 CFR part 44.

982.160 HUD determination to administer a local program.

If the Assistant Secretary for Public and Indian Housing determines that there is no PHA organized, or that there is no PHA able and willing to implement the provisions of this part for an area, HUD (or an entity acting on behalf of HUD) may enter into HAP contracts with owners and perform the functions otherwise assigned to PHAs under this part with respect to the area.

982.161 Conflict of interest.

(a) Neither the PHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the HCV program in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

(1) Any present or former member or officer of the PHA (except a participant commissioner);

(2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs;

(3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or

(4) Any member of the Congress of the United States.

(b) Any member of the classes described in paragraph (a) of this section must disclose their interest or prospective interest to the PHA and HUD.

(c) The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

982.162 Use of HUD-required contracts and other forms.

(a) The PHA must use program contracts and other forms required by HUD headquarters, including:

(1) The consolidated ACC between HUD and the PHA;

(2) The HAP contract between the PHA and the owner; and

(3) The tenancy addendum required by HUD (which is included both in the HAP contract and in the lease between the owner and the tenant).

(b) Required program contracts and other forms must be word-for-word in the form required by HUD headquarters. Any additions to or modifications of required program contracts or other forms must be approved by HUD headquarters.

982.163 Fraud recoveries.

Under 24 CFR part 792, the PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner by litigation, court-order or a repayment agreement.

Subpart E Admission to Tenant-based Program

982.201 Eligibility and targeting.

(a) *When applicant is eligible: General.* The PHA may admit only eligible families to the program. To be eligible, an applicant must be a "family;" must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E. If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

(b) *Income*—(1) *Income-eligibility.* To be income-eligible, the applicant must be a family in any of the following categories:

(i) A "very low income" family;

(ii) A low-income family that is "continuously assisted" under the 1937 Housing Act;

(iii) A low-income family that meets additional eligibility criteria specified in the PHA administrative plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;

(iv) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act (42 U.S.C. 1437f(o)(4)(D));

(v) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in §248.101 of this title;

(vi) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under §248.173 of this title.

(2) *Income-targeting.* (i) Not less than 75 percent of the families admitted to a PHA's HCV program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. Annual income of such families shall be verified within the period described in paragraph (e) of this section.

(ii) A PHA may admit a lower percent of extremely low income families during a PHA fiscal year (than otherwise required under paragraph (b)(2)(i) of this section) if HUD approves the use of such lower percent by the PHA, in accordance with the PHA plan, based on HUD's determination that the following circumstances necessitate use of such lower percent by the PHA:

(A) The PHA has opened its waiting list for a reasonable time for admission of extremely low income families residing in the same metropolitan statistical area (MSA) or non-metropolitan county, both inside and outside the PHA jurisdiction;

(B) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to such families, including outreach and marketing to extremely low income families on the Section 8 and public housing waiting lists of other PHAs with jurisdiction in the same MSA or non-metropolitan county;

(C) Notwithstanding such actions by the PHA (in accordance with paragraphs (b)(2)(ii)(A) and (B) of this section), there are not enough extremely low income families on the PHA's waiting list to fill available slots in the program during any fiscal year for which use of a lower percent is approved by HUD; and

(D) Admission of the additional very low income families other than extremely low income families to the PHA's tenant-based voucher program will substantially address worst case housing needs as determined by HUD.

(iii) If approved by HUD, the admission of a portion of very low income welfare-to-work (WTW) families that are not extremely low income families may be disregarded in determining compliance with the PHA's income-targeting obligations under paragraph (b)(2)(i) of this section. HUD will grant such approval only if and to the extent that the PHA has demonstrated to HUD's satisfaction that compliance with such targeting obligations with respect to such portion of WTW families would interfere with the objectives of the welfare-to-work voucher program. If HUD grants such approval, admission of that portion of WTW families is not counted in the base number of families admitted to a PHA's tenant-based voucher program during the fiscal year for purposes of income targeting.

(iv) Admission of families as described in paragraphs (b)(1)(ii) or (b)(1)(v) of this section is not subject to targeting under paragraph (b)(2)(i) of this section.

(v) If the jurisdictions of two or more PHAs that administer the HCV program cover an identical geographic area, such PHAs may elect to be treated as a single PHA for purposes of targeting under paragraph (b)(2)(i) of this section. In such a case, the PHAs shall cooperate to assure that aggregate admissions by such PHAs comply with the targeting requirement. If such PHAs do not have a single fiscal year, HUD will determine which PHA's fiscal year is used for this purpose.

(vi) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the HCV program, such admission shall be counted against the targeting obligation of the initial PHA (unless the receiving PHA absorbs the portable family into the receiving PHA's HCV program from the point of admission).

(3) The annual income (gross income) of an applicant family is used both for determination of income-eligibility under paragraph (b)(1) of this section and for targeting under paragraph (b)(2)(i) of this section. In determining annual income of an applicant family that includes a person with disabilities, the determination must include the disallowance of increase in annual income as provided in 24 CFR 5.617, if applicable.

(4) The applicable income limit for issuance of a voucher when a family is selected for the program is the highest income limit (for the family size) for areas in the PHA jurisdiction. The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted in the program. At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.

(c) *Family composition.* See definition of "family" in 24 CFR 5.403.

(d) *Continuously assisted.* (1) An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

(2) The PHA must establish policies concerning whether and to what extent a brief interruption between assistance under one of these programs and admission to the voucher program will be considered to break continuity of assistance under the 1937 Housing Act.

(e) *When PHA verifies that applicant is eligible.* The PHA must receive information verifying that an applicant is eligible within the period of 60 days before the PHA issues a voucher to the applicant.

(f) *Decision to deny assistance*-(1) *Notice to applicant.* The PHA must give an applicant prompt written notice of a decision denying admission to the program (including a decision that the applicant is not eligible, or denying assistance for other reasons). The notice must give a brief statement of the reasons for the decision. The notice must also state that the applicant may request an informal review of the decision, and state how to arrange for the informal review.

(2) For description of the grounds for denying assistance because of action or inaction by the applicant, see §982.552(b) and (c) (requirement and authority to deny admission) and §982.553(a) (crime by family members).

982.202 How applicants are selected: General requirements.

(a) *Waiting list admissions and special admissions.* The PHA may admit an applicant for participation in the program either:

(1) As a special admission (see 982.203).

(2) As a waiting list admission (see 982.204 through 982.210).

(b) *Prohibited admission criteria.* (1) Where family lives. Admission to the program may not be based on where the family lives before admission to the program. However, the PHA may target assistance for families who live in public housing or other federally assisted housing, or may adopt a residency preference (see 982.207).

(2) Where family will live. Admission to the program may not be based on where the family will live with assistance under the program.

(3) Family characteristics. The PHA preference system may provide a preference for admission of families with certain characteristics from the PHA waiting list. However, admission to the program may not be based on:

(i) Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;

(ii) Discrimination because a family includes children (familial status discrimination);

(iii) Discrimination because of age, race, color, religion, sex, or national origin;

(iv) Discrimination because of disability; or

(v) Whether a family decides to participate in a family self-sufficiency program.

(c) *Applicant status.* An applicant does not have any right or entitlement to be listed on the PHA waiting list, to any particular position on the waiting list, or to admission to the programs. The preceding sentence does not affect or prejudice any right, independent of this rule, to bring a judicial action challenging a PHA violation of a constitutional or statutory requirement.

(d) *Admission policy.* The PHA must admit applicants for participation in accordance with HUD regulations and other requirements, including, but not limited to, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to select applicants from the waiting list, including any residency preference or other local preference.

982.203 Special admission (non-waiting list): Assistance targeted by HUD.

(a) If HUD awards a PHA program funding that is targeted for families living in specified units:

(1) The PHA must use the assistance for the families living in these units.

(2) The PHA may admit a family that is not on the PHA waiting list, or without considering the family's waiting list position. The PHA must maintain records showing that the family was admitted with HUD-targeted assistance.

(b) The following are examples of types of program funding that may be targeted for a family living in a specified unit:

(1) A family displaced because of demolition or disposition of a public housing project;

(2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;

(3) For housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990 (41 U.S.C. 4101 et seq.):

(i) A non-purchasing family residing in a project subject to a homeownership program (under 24 CFR 248.173); or

(ii) A family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract (as provided in 24 CFR 248.165);

(4) A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and

(5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project.

982.204 Waiting list: Administration of waiting list.

(a) *Admission from waiting list.* Except for special admissions, participants must be selected from the PHA waiting list. The PHA must select participants from the waiting list in accordance with admission policies in the PHA administrative plan.

(b) *Organization of waiting list.* The PHA must maintain information that permits the PHA to select participants from the waiting list in accordance with the PHA admission policies. The waiting list must contain the following information for each applicant listed:

(1) Applicant name;

(2) Family unit size (number of bedrooms for which family qualifies under PHA occupancy standards);

(3) Date and time of application;

(4) Qualification for any local preference;

(5) Racial or ethnic designation of the head of household.

(c) *Removing applicant names from the waiting list.* (1) The PHA administrative plan must state PHA policy on when applicant names may be removed from the waiting list. The policy may provide that the PHA will remove names of applicants who do not respond to PHA requests for information or updates.

(2) A PHA decision to withdraw from the waiting list the name of an applicant family that includes a person with disabilities is subject to reasonable accommodation in accordance with 24 CFR part 8. If the applicant did not respond to the PHA request for information or updates because of the family member's disability, the PHA must reinstate the applicant in the family's former position on the waiting list.

(d) *Family size.* (1) The order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the PHA occupancy policy.

(2) If the PHA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the PHA may not skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available.

(e) *Funding for specified category of waiting list families.* When HUD awards a PHA program funding for a specified category of families on the waiting list, the PHA must select applicant families in the specified category.

(f) *Number of waiting lists.* A PHA must use a single waiting list for admission to its Section 8 tenant-based assistance program. However, the PHA may use a separate single waiting list for such admissions for a county or municipality.

982.205 Waiting list: Different programs.

(a) *Merger and cross-listing*—(1) *Merged waiting list.* A PHA may merge the waiting list for tenant-based assistance with the PHA waiting list for admission to another assisted housing program, including a federal or local program. In admission from the merged waiting list, admission for each federal program is subject to federal regulations and requirements for the particular program.

(2) *Non-merged waiting list: Cross-listing*. If the PHA decides not to merge the waiting list for tenant-based assistance with the waiting list for the PHA's public housing program, project-based voucher program or moderate rehabilitation program:

(i) If the PHA's waiting list for tenant-based assistance is open when an applicant is placed on the waiting list for the PHA's public housing program, project-based certificate program or moderate rehabilitation program, the PHA must offer to place the applicant on its waiting list for tenant-based assistance.

(ii) If the PHA's waiting list for its public housing program, project-based certificate program or moderate rehabilitation program is open when an applicant is placed on the waiting list for its tenant-based program, and if the other program includes units suitable for the applicant, the PHA must offer to place the applicant on its waiting list for the other program.

(b) *Other housing assistance: Effect of application for, receipt or refusal.* (1) For purposes of this section, "other housing subsidy" means a housing subsidy other than assistance under the voucher program. Housing subsidy includes subsidy assistance under a federal housing program (including public housing), a State housing program, or a local housing program.

(2) The PHA may not take any of the following actions because an applicant has applied for, received, or refused other housing assistance:

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;

(ii) Deny any admission preference for which the applicant is currently qualified;

(iii) Change the applicant's place on the waiting list based on preference, date and time of application, or other factors affecting selection under the PHA selection policy; or

(iv) Remove the applicant from the waiting list.

982.206 Waiting list: Opening and closing; public notice.

(a) *Public notice.* (1) When the PHA opens a waiting list, the PHA must give public notice that families may apply for tenant-based assistance. The public notice must state where and when to apply.

(2) The PHA must give the public notice by publication in a local newspaper of general circulation, and also by minority media and other suitable means. The notice must comply with HUD fair housing requirements.

(3) The public notice must state any limitations on who may apply for available slots in the program.

(b) *Criteria defining what families may apply*. (1) The PHA may adopt criteria defining what families may apply for assistance under a public notice.

Example A: The PHA decides that applications will only be accepted from families that qualify for federal preference, or from homeless federal preference families.

Example B: In admission to the program, the PHA must give preference to elderly families, displaced families and displaced persons over other single persons (24 CFR 812.3). The PHA decides that applications from other single persons will not be accepted.

(2) If the waiting list is open, the PHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance because of action or inaction by members of the family) for the grounds stated in 982.552 and 982.553.

(c) *Closing waiting list*. If the PHA determines that the existing waiting list contains an adequate pool for use of available program funding, the PHA may stop accepting new applications, or may accept only applications meeting criteria adopted by the PHA.

982.207 Waiting list: Local preferences in admission to program.

(a) *Establishment of PHA local preferences.* (1) The PHA may establish a system of local preferences for selection of families admitted to the program. PHA selection preferences must be described in the PHA administrative plan.

(2) The PHA system of local preferences must be based on local housing needs and priorities, as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. The PHA shall consider public comment on the proposed public housing agency plan (as received pursuant to 903.17 of this chapter) and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

(3) The PHA may limit the number of applicants that may qualify for any local preference.

(4) The PHA shall not deny a local preference, nor otherwise exclude or penalize a family in admission to the program, solely because the family resides in a public housing project. The PHA may establish a preference for families residing in public housing who are victims of a crime of violence (as defined in 18 U.S.C. 16).

(b) *Particular local preferences.* (1) *Residency requirements or preferences*.

(i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ('residency preference area'). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this title. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families*. The PHA may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

(3) *Preference for person with disabilities.* The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for admission of persons with a specific disability.

(4) *Preference for victims of domestic violence, dating violence, sexual assault, or stalking*. The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.

(5) *Preference for single persons who are elderly, displaced, homeless, or persons with disabilities.* The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

(c) *Selection among families with preference.* The PHA system of preferences may use either of the following to select among applicants on the waiting list with the same preference status:

(1) Date and time of application; or

(2) A drawing or other random choice technique.

(d) *Preference for higher-income families.* The PHA must not select families for admission to the program in an order different from the order on the waiting list for the purpose of selecting higher income families for admission to the program.

(e) *Verification of selection method.* The method for selecting applicants from a preference category must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the administrative plan.

Subpart G Leasing a Unit

982.301 Information when family is selected.

(a) *PHA briefing of family.*

(1) When the PHA selects a family to participate in a tenant-based program, the PHA must give the family an oral briefing. The briefing must include information on the following subjects:

(i) A description of how the program works;

(ii) Family and owner responsibilities; and

(iii) Where the family may lease a unit, including renting a dwelling unit inside or outside the PHA jurisdiction.

(2) An explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction, or outside the PHA jurisdiction under portability procedures, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order. The family must be informed of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance.

(3) The briefing must also explain the advantages of areas that do not have a high concentration of low-income families.

(4) In briefing a family that includes any disabled person, the PHA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6.

(5) In briefing a welfare-to-work family, the PHA must include specification of any local obligations of a welfare-to-work family and an explanation that failure to meet these obligations is grounds for PHA denial of admission or termination of assistance.

(b) *Information packet.* When a family is selected to participate in the program, the PHA must give the family a packet that includes information on the following subjects:

(1) The term of the voucher, voucher suspensions, and PHA policy on any extensions of the term. If the PHA allows extensions, the packet must explain how the family can request an extension;

(2) How the PHA determines the amount of the housing assistance payment for a family, including:

(i) How the PHA determines the payment standard for a family; and

(ii) How the PHA determines the total tenant payment for a family.

(3) How the PHA determines the maximum rent for an assisted unit;

(4) Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance;

(5) The HUD-required 'tenancy addendum' that must be included in the lease;

(6) The form that the family uses to request PHA approval of the assisted tenancy, and an explanation of how to request such approval;

(7) A statement of the PHA policy on providing information about a family to prospective owners;

(8) PHA subsidy standards, including when the PHA will consider granting exceptions to the standards;

(9) Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides;

(10) Information on federal, State and local equal opportunity laws, and a copy of the housing discrimination complaint form;

(11) A list of landlords known to the PHA who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the PHA that may assist the family in locating a unit. PHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration;

(12) Notice that if the family includes a disabled person, the family may request a current listing of accessible units known to the PHA that may be available;

(13) Family obligations under the program;

(14) The grounds on which the PHA may terminate assistance for a participant family because of family action or failure to act; and

(15) PHA informal hearing procedures. This information must describe when the PHA is required to give a participant family the opportunity for an informal hearing, and how to request a hearing.

982.302 Issuance of voucher; Requesting PHA approval of assisted tenancy.

(a) When a family is selected, or when a participant family wants to move to another unit, the PHA issues a voucher to the family. The family may search for a unit.

(b) If the family finds a unit, and the owner is willing to lease the unit under the program, the family may request PHA approval of the tenancy. The PHA has the discretion whether to permit the family to submit more than one request at a time.

(c) The family must submit to the PHA a request for approval of the tenancy and a copy of the lease, including the HUD-prescribed tenancy addendum. The request must be submitted during the term of the voucher.

(d) The PHA specifies the procedure for requesting approval of the tenancy. The family must submit the request for approval of the tenancy in the form and manner required by the PHA.

982.303 Term of voucher.

(a) *Initial term.* The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher.

(b) *Extensions of term.* (1) At its discretion, the PHA may grant a family one or more extensions of the initial voucher term in accordance with PHA policy as described in the PHA administrative plan. Any extension of the term is granted by PHA notice to the family.

(2) If the family needs and requests an extension of the initial voucher term as a reasonable accommodation, in accordance with part 8 of this title, to make the program accessible to a family member who is a person with disabilities, the PHA must extend the voucher term up to the term reasonably required for that purpose.

(c) *Suspension of term.* The PHA must provide for suspension of the initial or any extended term of the voucher from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied.

(d) *Progress report by family to the PHA.* During the initial or any extended term of a voucher, the PHA may require the family to report progress in leasing a unit. Such reports may be required at such intervals or times as determined by the PHA.

982.304 Illegal discrimination: PHA assistance to family.

A family may claim that illegal discrimination because of race, color, religion, sex, national origin, age, familial status or disability prevents the family from finding or leasing a suitable unit with assistance under the program. The PHA must give the family information on how to fill out and file a housing discrimination complaint.

982.305 PHA approval of assisted tenancy.

(a) *Program requirements.* The PHA may not give approval for the family of the assisted tenancy, or execute a HAP contract, until the PHA has determined that all the following meet program requirements:

(1) The unit is eligible;

(2) The unit has been inspected by the PHA and passes HQS;

(3) The lease includes the tenancy addendum;

(4) The rent to owner is reasonable; and

(5) At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share does not exceed 40 percent of the family's monthly adjusted income.

(b) *Actions before lease term.* (1) All of the following must always be completed before the beginning of the initial term of the lease for a unit:

(i) The PHA has inspected the unit and has determined that the unit satisfies the HQS;

(ii) The landlord and the tenant have executed the lease (including the HUD-prescribed tenancy addendum, and the lead-based paint disclosure information as required in §35.92(b) of this title); and

(iii) The PHA has approved leasing of the unit in accordance with program requirements.

(2)(i) The PHA must inspect the unit, determine whether the unit satisfies the HQS, and notify the family and owner of the determination:

(A) In the case of a PHA with up to 1250 budgeted units in its tenant-based program, within fifteen days after the family and the owner submit a request for approval of the tenancy.

(B) In the case of a PHA with more than 1250 budgeted units in its tenant-based program, within a reasonable time after the family submits a request for approval of the tenancy. To the extent practicable, such inspection and determination must be completed within fifteen days after the family and the owner submit a request for approval of the tenancy.

(ii) The fifteen day clock (under paragraph (b)(2)(i)(A) or paragraph (b)(2)(i)(B) of this section) is suspended during any period when the unit is not available for inspection.

(3) In the case of a unit subject to a lease-purchase agreement, the PHA must provide written notice to the family of the environmental requirements that must be met before commencing homeownership assistance for the family (see §982.626(c)).

(c) *When HAP contract is executed.* (1) The PHA must use best efforts to execute the HAP contract before the beginning of the lease term. The HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

(2) The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed.

(3) If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

(4) Any HAP contract executed after the 60 day period is void, and the PHA may not pay any housing assistance payment to the owner.

(d) *Notice to family and owner.* After receiving the family's request for approval of the assisted tenancy, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

(e) *Procedure after PHA approval.* If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract.

982.306 PHA disapproval of owner.

(a) The PHA must not approve an assisted tenancy if the PHA has been informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation under 2 CFR part 2424.

(b) When directed by HUD, the PHA must not approve an assisted tenancy if: (1) The federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements, and such action is pending; or

(2) A court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements.

(c) In its administrative discretion, the PHA may deny approval to lease a unit from an owner for any of the following reasons:

(1) The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

(2) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

(3) The owner has engaged in any drug-related criminal activity or any violent criminal activity;

(4) The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

(5) The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

(i) Threatens the right to peaceful enjoyment of the premises by other residents;

(ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;

(iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or

(iv) Is drug-related criminal activity or violent criminal activity; or

(6) The owner has a history or practice of renting units that fail to meet State or local housing codes; or

(7) The owner has not paid State or local real estate taxes, fines or assessments.

(d) The PHA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. This restriction against PHA approval of a unit only applies at the time a family initially receives tenant-based assistance for occupancy of a particular unit, but does not apply to PHA approval of a new tenancy with continued tenant-based assistance in the same unit.

(e) Nothing in this rule is intended to give any owner any right to participate in the program.

(f) For purposes of this section, 'owner' includes a principal or other interested party.

982.307 Tenant screening.

(a) *PHA option and owner responsibility*. (1) The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy. The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(2) The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner.

(3) 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:

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and

(v) Compliance with other essential conditions of tenancy.

(b) *PHA information about tenant.* (1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

(ii) The name and address (if known to the PHA) of the landlord at the family's current and prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug-trafficking by family members.

(3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information packet that is given to a family selected to participate in the program. The PHA policy must provide that the PHA will give the same types of information to all families and to all owners.

(4) In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

982.308 Lease and tenancy.

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

(b) *Form of lease.* (1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) 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 (plus the HUD-prescribed tenancy addendum). 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 a PHA model lease (including the HUD-prescribed tenancy addendum). The HAP contract prescribed by HUD will contain the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

(c) *State and local law. T*he PHA may review the lease to determine if the lease complies with State and local law. The PHA may decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law.

(d) *Required information.* The lease must specify all of the following:

(1) The names of the owner and the tenant;

(2) The unit rented (address, apartment number, and any other information needed to identify the contract unit);

(3) The term of the lease (initial term and any provisions for renewal);

(4) The amount of the monthly rent to owner; and

(5) A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

(e) *Reasonable rent.* The rent to owner must be reasonable (see 982.507).

(f) *Tenancy addendum*. (1) The HAP contract form required by HUD shall include an addendum (the 'tenancy addendum'), that sets forth:

(i) The tenancy requirements for the program (in accordance with this section and 982.309 and 982.310); and

(ii) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide).

(2) All provisions in the HUD-required tenancy addendum must be added word-for-word to the owner's standard form lease that is used by the owner for unassisted tenants. The tenant shall have the right to enforce the tenancy addendum against the owner, and the terms of the tenancy addendum shall prevail over any other provisions of the lease.

(g) *Changes in lease or rent.* (1) If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of this section.

(2) In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(i) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(ii) If there are any changes in lease provisions governing the term of the lease;

(iii) If the family moves to a new unit, even if the unit is in the same building or complex.

(3) PHA approval of the tenancy, and execution of a new HAP contract, are not required for changes in the lease other than as specified in paragraph (g)(2) of this section.

(4) The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and any such changes shall be subject to rent reasonableness requirements (see 982.503).

982.309 Term of assisted tenancy.

(a) *Initial term of lease.* (1) Except as provided in paragraph (a)(2) of this section, the initial lease term must be for at least one year.

(2) The PHA may approve a shorter initial lease term if the PHA determines that:

(i) Such shorter term would improve housing opportunities for the tenant; and

(ii) Such shorter term is the prevailing local market practice.

(3) During the initial term of the lease, the owner may not raise the rent to owner.

(4) The PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC.

(b) *Term of HAP contract.* (1) The term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

(2) The HAP contract terminates if any of the following occurs:

(i) The lease is terminated by the owner or the tenant;

(ii) The PHA terminates the HAP contract; or

(iii) The PHA terminates assistance for the family.

(c) *Family responsibility.* (1) If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice of termination at the same time. Failure to do this is a breach of family obligations under the program.

(2) The family must notify the PHA and the owner before the family moves out of the unit. Failure to do this is a breach of family obligations under the program.

982.310 Owner termination of tenancy.

(a) *Grounds.* During the term of the lease, the owner may not terminate the tenancy except on the following grounds:

(1) Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease;

(2) Violation of federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or

(3) Other good cause.

(b) *Nonpayment by PHA:* Not grounds for termination of tenancy.

(1) 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 between the owner and the PHA.

(2) The PHA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease the owner may not terminate the tenancy of the family for nonpayment of the PHA housing assistance payment.

(c) *Criminal activity.* (1) *Evicting drug criminals due to drug crime on or near the premises.* The lease must provide that drug-related criminal activity engaged in, on or near the premises by any tenant, household member, or guest, or such activity engaged in on the premises by any other person under the tenant's control, is grounds for the owner to terminate tenancy. In addition, the lease must provide that the owner may evict a family when the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) *Evicting other criminals.* (i) *Threat to other residents.* The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);

(B) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or

(C) Any violent criminal activity on or near the premises by a tenant, household member, or guest, or any such activity on the premises by any other person under the tenant's control.

(ii) *Fugitive felon or parole violator.* The lease must provide that the owner may terminate the tenancy if a tenant is:

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

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person in accordance with this section if the owner determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. (See part 5, subpart J, of this title for provisions concerning access to criminal records.)

(d) *Other good cause*. (1) 'Other good cause' for termination of tenancy by the owner may include, but is not limited to, any of the following examples:

(i) Failure by the family to accept the offer of a new lease or revision;

(ii) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;

(iii) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

(iv) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

(2) During the initial lease term, the owner may not terminate the tenancy for 'other good cause', unless the owner is terminating the tenancy because of something the family did or failed to do. For example, during this period, the owner may not terminate the tenancy for 'other good cause' based on any of the following grounds: failure by the family to accept the offer of a new lease or revision; the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy (see paragraph (d)(1)(iv) of this section).

(e) *Owner notice.* (1) *Notice of grounds*.

(i) The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

(ii) The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

(2) *Eviction notice.*

(i) Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.

(ii) The owner must give the PHA a copy of any owner eviction notice to the tenant.

(f) *Eviction by court action.* The owner may only evict the tenant from the unit by instituting a court action.

(g) *Regulations not applicable.* 24 CFR part 247 (concerning evictions from certain subsidized and HUD-owned projects) does not apply to a tenancy assisted under this part 982.

(h) *Termination of tenancy decisions.*—(1) *General.* If the law and regulation permit the owner to take an action but do not require action to be taken, the owner may take or not take the action in accordance with the owner's standards for eviction. The owner may consider all of the circumstances relevant to a particular eviction case, such as:

(i) The seriousness of the offending action;

(ii) The effect on the community of denial or termination or the failure of the owner to take such action;

(iii) The extent of participation by the leaseholder in the offending action;

(iv) The effect of denial of admission or termination of tenancy on household members not involved in the offending activity;

(v) The demand for assisted housing by families who will adhere to lease responsibilities; (vi) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;

(vii) The effect of the owner's action on the integrity of the program.

(2) *Exclusion of culpable household member.* The owner may require a tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

(3) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(4) *Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking*. The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

982.311 When assistance is paid.

(a) *Payments under HAP contract.* Housing assistance payments are paid to the owner in accordance with the terms of the HAP contract. Housing assistance payments may only be paid to the owner during the lease term, and while the family is residing in the unit.

(b) *Termination of payment: When owner terminates the lease.* Housing assistance payments terminate when the lease is terminated by the owner in accordance with the lease. However, if the owner has commenced the process to evict the tenant, and if the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner in accordance with the HAP contract until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The PHA may continue such payments until the family moves from or is evicted from the unit.

(c) *Termination of payment: Other reasons for termination.* Housing assistance payments terminate if:

(1) The lease terminates;

(2) The HAP contract terminates; or

(3) The PHA terminates assistance for the family.

(d) *Family move-out.* (1) If the family moves out of the unit, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

(2) If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

982.312 Absence from unit.

(a) The family may be absent from the unit for brief periods. For longer absences, the PHA administrative plan establishes the PHA policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days in any circumstance, or for any reason. At its discretion, the PHA may allow absence for a lesser period in accordance with PHA policy.

(b) Housing assistance payments terminate if the family is absent for longer than the maximum period permitted. The term of the HAP contract and assisted lease also terminate. (The owner must reimburse the PHA for any housing assistance payment for the period after the termination.)

(c) Absence means that no member of the family is residing in the unit.

(d)(1) The family must supply any information or certification requested by the PHA to verify that the family is residing in the unit, or relating to family absence from the unit. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit, including any information requested on the purposes of family absences.

(2) The PHA may adopt appropriate techniques to verify family occupancy or absence, including letters to the family at the unit, phone calls, visits or questions to the landlord or neighbors.

(e) The PHA administrative plan must state the PHA policies on family absence from the dwelling unit. The PHA absence policy includes:

(1) How the PHA determines whether or when the family may be absent, and for how long. For example, the PHA may establish policies on absences because of vacation, hospitalization or imprisonment; and

(2) Any provision for resumption of assistance after an absence, including readmission or resumption of assistance to the family.

982.313 Security deposit: Amounts owed by tenant.

(a) The owner may collect a security deposit from the tenant.

(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) When the tenant moves out of the dwelling unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid rent payable by the tenant, damages to the unit or for other amounts the tenant owes under the lease.

(d) 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, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the tenant.

(e) 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.

982.315 Family break-up.

(a) (1) The PHA has discretion to determine which members of an assisted family continue to receive assistance in the program if the family breaks up. The PHA administrative plan must state PHA policies on how to decide who remains in the program if the family breaks up.

(2) If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), the PHA must ensure that the victim retains assistance.

(b) The factors to be considered in making this decision under the PHA policy may include:

(1) Whether the assistance should remain with family members remaining in the original assisted unit.

(2) The interest of minor children or of ill, elderly, or disabled family members.

(3) Whether family members are forced to leave the unit as a result of actual or threatened domestic violence, dating violence, sexual assault, or stalking.

(4) Whether any of the family members are receiving protection as victims of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and whether the abuser is still in the household.

(5) Other factors specified by the PHA.

(c) If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement or judicial decree, the PHA is bound by the court's determination of which family members continue to receive assistance in the program.

982.316 Live-in aide.

(a) A family that consists of one or more elderly, near-elderly or disabled persons may request that the PHA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability. (See 982.402(b)(6) concerning effect of live-in aide on family unit size.)

(b) At any time, the PHA may refuse to approve a particular person as a live-in aide, or may withdraw such approval, if:

(1) The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

(2) The person commits drug-related criminal activity or violent criminal activity; or

(3) The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

982.317 Lease-purchase agreements.

(a) A family leasing a unit with assistance under the program may enter into an agreement with an owner to purchase the unit. So long as the family is receiving such rental assistance, all requirements applicable to families otherwise leasing units under the tenant-based program apply. Any homeownership premium (e.g., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a downpayment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family.

(b) In determining whether the rent to owner for a unit subject to a lease-purchase agreement is a reasonable amount in accordance with 982.503, any homeownership premium paid by the family to the owner must be excluded when the PHA determines rent reasonableness.

Subpart H Where Family Can Live and Move

982.351 Overview.

This subpart describes what kind of housing is eligible for leasing, and the areas where a family can live with tenant-based assistance. The subpart covers:

(a) Assistance for a family that rents a dwelling unit in the jurisdiction of the PHA that originally selected the family for tenant-based assistance.

(b) 'Portability' assistance for a family that rents a unit outside the jurisdiction of the initial PHA.

982.352 Eligible housing.

(a) *Ineligible housing.* The following types of housing may not be assisted by a PHA in the tenant-based programs:

(1) A public housing or Indian housing unit;

(2) A unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);

(3) Nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services;

(4) College or other school dormitories;

(5) Units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(6) A unit occupied by its owner or by a person with any interest in the unit.

(7) For provisions on PHA disapproval of an owner, see 982.306.

(b) *PHA-owned housing.* (1) A unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA) may only be assisted under the tenant-based program if all the following conditions are satisfied:

(i) The PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease, and a PHA-owned unit is freely selected by the family, without PHA pressure or steering.

(ii) The unit is not ineligible housing.

(iii) During assisted occupancy, the family may not benefit from any form of housing subsidy that is prohibited under paragraph (c) of this section.

(iv) (A) The PHA must obtain the services of an independent entity to perform the following PHA functions as required under the program rule:

(1) To determine rent reasonableness in accordance with 982.507. The independent agency shall communicate the rent reasonableness determination to the family and the PHA.

(2) To assist the family negotiate the rent to owner in accordance with 982.506.

(3) To inspect the unit for compliance with the HQS in accordance with 982.305(a) and 982.405 (except that 982.405(e) is not applicable). The independent agency shall communicate the results of each such inspection to the family and the PHA.

(B) The independent agency used to perform these functions must be approved by HUD. The independent agency may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government), or may be another HUD-approved independent agency.

(C) The PHA may compensate the independent agency from PHA ongoing administrative fee income for the services performed by the independent agency. The PHA may not use other program receipts to compensate the independent agency for such services. The PHA and the independent agency may not charge the family any fee or charge for the services provided by the independent agency.

(2) The PHA as owner is subject to the same program requirements that apply to other owners in the program.

(c) *Prohibition against other housing subsidy.* A family may not receive the benefit of tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

(1) Public or Indian housing assistance;

(2) Other Section 8 assistance (including other tenant-based assistance);

(3) Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

(4) Section 101 rent supplements;

(5) Section 236 rental assistance payments;

(6) Tenant-based assistance under the HOME Program;

(7) Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);

(8) Any local or State rent subsidy;

(9) Section 202 supportive housing for the elderly;

(10) Section 811 supportive housing for persons with disabilities;

(11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or

(12) Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

982.353 Where family can lease a unit with tenant-based assistance.

(a) *Assistance in the initial PHA jurisdiction.* The family may receive tenant-based assistance to lease a unit located anywhere in the jurisdiction (as determined by State and local law) of the initial PHA. HUD may nevertheless restrict the family's right to lease such a unit anywhere in such jurisdiction if HUD determines that limitations on a family's opportunity to select among available units in that jurisdiction are appropriate to achieve desegregation goals in accordance with obligations generated by a court order or consent decree.

(b) *Portability: Assistance outside the initial PHA jurisdiction.* Subject to paragraph (c) of this section, and to §982.552 and §982.553, a voucher- holder or participant family has the right to receive tenant-based voucher assistance, in accordance with requirements of this part, to lease a unit outside the initial PHA jurisdiction, anywhere in the United States, in the jurisdiction of a PHA with a tenant- based program under this part. The initial PHA must not provide such portable assistance for a participant if the family has moved out of the assisted unit in violation of the lease except as provided for in this subsection. If the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes him- or herself to be threatened with imminent harm from further violence by remaining in the dwelling unit (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move), and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial PHA and move to another jurisdiction under the Housing Choice Voucher Program.

(c) *Nonresident applicants*. (1) This paragraph (c) applies if neither the household head or spouse of an assisted family already had a 'domicile' (legal residence) in the jurisdiction of the initial PHA at the time when the family first submitted an application for participation in the program to the initial PHA.

(2) The following apply during the 12 month period from the time when a family described in paragraph (c)(1) of this section is admitted to the program:

(i) The family may lease a unit anywhere in the jurisdiction of the initial PHA;

(ii) The family does not have any right to portability;

(iii) The initial PHA may choose to allow portability during this period.

(3) If the initial PHA approves, the family may lease a unit outside the PHA jurisdiction under portability procedures.

(4) Paragraph (c) of this section does not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

(d) *Income eligibility.* (1) For admission to the program, a family must be income eligible in the area where the family initially leases a unit with assistance under the program.

(2) If a family is a participant in the initial PHA's voucher program, income eligibility is not redetermined when the family moves to the receiving PHA program under portability procedures.

(e) *Freedom of choice.* The PHA may not directly or indirectly reduce the family's opportunity to select among available units, except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g., prohibition on the use of ineligible housing, housing not meeting HQS, or housing for which the rent to owner exceeds a reasonable rent). However, the PHA must provide families the information required in § 982.301 for both the oral briefing and the information packet to ensure that they have the information they need to make an informed decision on their housing choice.

982.354 Move with continued tenant-based assistance.

(a) *Applicability.* This section states when a participant family may move to a new unit with continued tenant-based assistance:

(b) *When family may move.* A family may move to a new unit if:

(1) The assisted lease for the old unit has terminated. This includes a termination because:

(i) The PHA has terminated the HAP contract for the owner's breach; or

(ii) The lease has terminated by mutual agreement of the owner and the tenant.

(2) The owner has given the tenant a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the tenant.

(3) The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach, or otherwise).

(4) The family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the

dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit.

(c) *How many moves.* (1) A participant family may move with continued assistance under the program, either inside the PHA jurisdiction, or under the portability procedures (See 982.353) in accordance with the PHA's policies.

(2) Consistent with applicable civil rights laws and regulations, the PHA may establish policies that:

(i) Prohibit any move by the family during the initial lease term;

(ii) Prohibit more than one move by the family during any one-year period; and

(iii) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar- day period preceding the family's request to move.

(d) *Notice that family wants to move.* If the family wants to move to a new unit, the family must notify the PHA and the owner before moving from the old unit. If the family wants to move to a new unit that is located outside the initial PHA jurisdiction, the notice to the initial PHA must specify the area where the family wants to move. See portability procedures in subpart H of this part.

(e) *When PHA may deny permission to move*. (1) The PHA may deny permission to move if the PHA does not have sufficient funding for continued assistance. The PHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves to a higher-cost unit based on insufficient funding.

982.355 Portability: Administration by receiving PHA.

(a) *General.* When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial PHA jurisdiction, the receiving PHA must administer assistance for the family if a PHA with a HCV program has jurisdiction in the area where the unit is located.

(b) *Requirement to administer assistance.* A receiving PHA cannot refuse to assist incoming portable families or direct them to another neighboring PHA for assistance. If there is more than one such PHA, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected as the receiving PHA. In cases where the family prefers not to select the receiving PHA, the initial PHA selects the receiving PHA on behalf of the family. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families.

(c) *Portability procedures.* The following portability procedures must be followed:

(1) When the family decides to use the voucher outside of the PHA jurisdiction, the family must notify the initial PHA of its desire to relocate and must specify the location where it wants to live.

(2) The initial PHA must determine the family's eligibility to move in accordance with §§ 982.353 and 982.354.

(3) Once the receiving PHA is determined in accordance with paragraph (b) of this section, the initial PHA must contact the receiving PHA, via email or other confirmed delivery method, prior to approving the family's request to move in order to determine whether the voucher will be absorbed or billed by the receiving PHA. The receiving PHA must advise the initial PHA in writing, via email or other confirmed delivery method, of its decision.

(4) If the receiving PHA notifies the initial PHA that it will absorb the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA.

(5) If the receiving PHA will bill the initial PHA for the portability voucher and the cost of the HAP will increase due to the move, the initial PHA may deny the move if it does not have sufficient funding for continued assistance in accordance with § 982.354 (e)(1).

(6) f a billing arrangement is approved by the initial PHA or if the voucher is to be absorbed by the receiving PHA, the initial PHA must issue the family a voucher to move, if it has not already done so, and advise the family how to contact and request assistance from the receiving PHA.

(7) The initial PHA must promptly notify the receiving PHA to expect the family. The initial PHA must give the receiving PHA the form HUD–52665, the most recent form HUD 50058 (Family Report) for the family, and all related verification information.

(8) The family must promptly contact the receiving PHA in order to be informed of the receiving PHA's procedures for incoming portable families and comply with these procedures. The family's failure to comply may result in denial or termination of the receiving PHA's voucher.

(9) The receiving PHA does not redetermine eligibility for a participant family. However, for a family that was not already receiving assistance in the PHA's HCV program, the initial PHA must determine whether the family is eligible for admission to the receiving PHA's HCV program. In determining income eligibility, the receiving PHA's income limits are used by the initial PHA.

(10) When a receiving PHA assists a family under portability, administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used.

(11) If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit.

(12) The receiving PHA must determine the family unit size for the family, and base its determination on the subsidy standards of the receiving PHA.

(13) The receiving PHA must issue a voucher to the family. The term of the receiving PHA voucher may not expire before 30 calendar days from the expiration date of the initial PHA voucher. If the voucher expires before the family arrives at the receiving PHA, the receiving PHA must contact the initial PHA to determine if it will extend the voucher.

(14) Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must notify the initial PHA of any extensions granted to the term of the voucher.

(15) The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA voucher. As required in § 982.303, if the family submits a request for tenancy approval during the term of the voucher, the PHA must suspend the term of that voucher.

(16) The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program, or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the voucher.

(17) At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with § 982.552 and 982.553.

(d) *Absorption by the receiving PHA.* (1) If funding is available under the consolidated ACC for the receiving PHA's HCV program, the receiving PHA may absorb the family into the receiving PHA's HCV program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving PHA's HCV program.

(2) HUD may require that the receiving PHA absorb all, or a portion of, incoming portable families. Under circumstances described in a notice published in the Federal Register, HUD may determine that receiving PHAs, or categories of receiving PHAs, should absorb all or a portion of incoming portable families. If HUD makes such a

determination, HUD will provide an opportunity for public comment, for a period of no less than 60 calendar days, on such policy and procedures. After consideration of public comments, HUD will publish a final notice in the Federal Register advising PHAs and the public of HUD's final determination on the subject of mandatory absorption of incoming portable families.

(3) HUD may provide financial or nonfinancial incentives (or both) to PHAs that absorb portability vouchers.

(e) *Portability Billing.* (1) To cover assistance for a portable family that was not absorbed in accordance with paragraph (d) of this section, the receiving PHA may bill the initial PHA for housing assistance payments and administrative fees.

(2) The initial PHA must promptly reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA for the portable family. The amount of the housing assistance payment for a portable family in the receiving PHA program is determined in the same manner as for other families in the receiving PHA program.

(3) The initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under HAP contract on the first day of the month for which the receiving PHA is billing the initial PHA under this section. If administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill under this section (e.g., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's prorated ongoing administrative fee). If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

(4) When a portable family moves out of the HCV program of a receiving PHA that has not absorbed the family, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA, and the first receiving PHA is no longer required to provide assistance for the family.

(5) In administration of portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial and receiving PHA must also comply with billing and payment deadlines under the financial procedures.

(6) A PHA must manage the PHA HCV program in a manner that ensures that the PHA has the financial ability to provide assistance for families that move out of the PHA's program under the portability procedures, and that have not been absorbed by the receiving PHA, as well as for families that remain in the PHA's program.

(7) HUD may reduce the administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements.

(f) *Portability funding.* (1) HUD may transfer funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC.

(2) HUD may provide additional funding (e.g., funds for incremental units) to the initial PHA for funds transferred to a receiving PHA for portability purposes.

(3) HUD may provide additional funding (e.g., funds for incremental units) to the receiving PHA for absorption of portable families.

(4) HUD may require the receiving PHA to absorb portable families.

(g) *Special purpose vouchers.* (1) The initial PHA must submit the codes used for special purpose vouchers on the form HUD–50058, Family Report, and the receiving PHA must maintain the codes on the Family Report, as long as the Receiving PHA chooses to bill the initial PHA.

(2) Initial and receiving PHAs must administer special purpose vouchers, such as the HUD-Veterans Affairs Supportive Housing vouchers, in accordance with HUD-established policy in cases where HUD has established alternative program requirements of such special purpose vouchers.

Subpart I Dwelling Unit: Housing Quality Standards, Subsidy Standards, Inspection and Maintenance

982.401 Housing quality standards (HQS).

(a) *Performance and acceptability requirements.* (1) This section states the housing quality standards (HQS) for housing assisted under the HCV program.

(2)(i) The HQS consist of:

(A) Performance requirements; and

(B) Acceptability criteria or HUD approved variations in the acceptability criteria.

(ii) This section states performance and acceptability criteria for these key aspects of housing quality:

(A) Sanitary facilities;

(B) Food preparation and refuse disposal;

(C) Space and security;

(D) Thermal environment;

(E) Illumination and electricity;

(F) Structure and materials;

(G) Interior air quality;

(H) Water supply;

(I) Lead-based paint;

(J) Access;

(K) Site and neighborhood;

(L) Sanitary condition; and

(M) Smoke detectors.

(3) All program housing must meet the HQS performance requirements both at commencement of assisted occupancy, and throughout the assisted tenancy.

(4)(i) In addition to meeting HQS performance requirements, the housing must meet the acceptability criteria stated in this section, unless variations are approved by HUD.

(ii) HUD may approve acceptability criteria variations for the following purposes:

(A) Variations which apply standards in local housing codes or other codes adopted by the PHA; or

(B) Variations because of local climatic or geographic conditions.

(iii) Acceptability criteria variations may only be approved by HUD pursuant to paragraph (a)(4)(ii) of this section if such variations either:

(A) Meet or exceed the performance requirements; or

(B) Significantly expand affordable housing opportunities for families assisted under the program.

(iv) HUD will not approve any acceptability criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

(b) *Sanitary facilities*-(1) *Performance requirements.* The dwelling unit must include sanitary facilities located in the unit. The sanitary facilities must be in proper operating condition, and adequate for personal cleanliness and the disposal of human waste. The sanitary facilities must be usable in privacy.

(2) *Acceptability criteria.* (i) The bathroom must be located in a separate private room and have a flush toilet in proper operating condition.

(ii) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water.

(iii) The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water.

(iv) The facilities must utilize an approvable public or private disposal system (including a locally approvable septic system).

(c) *Food preparation and refuse disposal*-(1) *Performance requirement.* (i) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner.

(ii) There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) *Acceptability criteria.* (i) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A

microwave oven may be substituted for a tenant-supplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and microwave ovens are furnished instead of an oven and stove or range to both subsidized and unsubsidized tenants in the building or premises.

(ii) The dwelling unit must have a kitchen sink in proper operating condition, with a sink trap and hot and cold running water. The sink must drain into an approvable public or private system.

(iii) The dwelling unit must have space for the storage, preparation, and serving of food.

(iv) There must be facilities and services for the sanitary disposal of food waste and refuse, including temporary storage facilities where necessary (e.g., garbage cans).

(d) *Space and security*-(1) *Performance requirement.* The dwelling unit must provide adequate space and security for the family.

(2) *Acceptability criteria.* (i) At a minimum, the dwelling unit must have a living room, a kitchen area, and a bathroom.

(ii) The dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(iii) Dwelling unit windows that are accessible from the outside, such as basement, first floor, and fire escape windows, must be lockable (such as window units with sash pins or sash locks, and combination windows with latches). Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

(iv) The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.

(e) *Thermal environment*-(1) *Performance requirement.* The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability criteria.* (i) There must be a safe system for heating the dwelling unit (and a safe cooling system, where present). The system must be in proper operating condition. The system must be able to provide adequate heat (and cooling, if applicable), either directly or indirectly, to each room, in order to assure a healthy living environment appropriate to the climate.

(ii) The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Electric heaters are acceptable.

(f) *Illumination and electricity*-(1) *Performance requirement.* Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. The electrical fixtures and wiring must ensure safety from fire.

(2) *Acceptability criteria.* (i) There must be at least one window in the living room and in each sleeping room.

(ii) The kitchen area and the bathroom must have a permanent ceiling or wall light fixture in proper operating condition. The kitchen area must also have at least one electrical outlet in proper operating condition.

(iii) The living room and each bedroom must have at least two electrical outlets in proper operating condition. Permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets.

(g) *Structure and materials*-(1) *Performance requirement.* The dwelling unit must be structurally sound. The structure must not present any threat to the health and safety of the occupants and must protect the occupants from the environment.

(2) *Acceptability criteria.* (i) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling, missing parts, or other serious damage.

(ii) The roof must be structurally sound and weathertight.

(iii) The exterior wall structure and surface must not have any serious defects such as serious leaning, buckling, sagging, large holes, or defects that may result in air infiltration or vermin infestation.

(iv) The condition and equipment of interior and exterior stairs, halls, porches, walkways, etc., must not present a danger of tripping and falling. For example, broken or missing steps or loose boards are unacceptable.

(v) Elevators must be working and safe.

(h) *Interior air quality*-(1) *Performance requirement.* The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.

(2) *Acceptability criteria.* (i) The dwelling unit must be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful pollutants.

(ii) There must be adequate air circulation in the dwelling unit.

(iii) Bathroom areas must have one openable window or other adequate exhaust ventilation.

(iv) Any room used for sleeping must have at least one window. If the window is designed to be openable, the window must work.

(i) *Water supply*-(1) *Performance requirement.* The water supply must be free from contamination.

(2) *Acceptability criteria.* The dwelling unit must be served by an approvable public or private water supply that is sanitary and free from contamination.

(j) *Lead-based paint performance requirement.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, M, and R of this title apply to units assisted under this part.

(k) *Access performance requirement.* The dwelling unit must be able to be used and maintained without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire (such as fire stairs or egress through windows).

(l) *Site and Neighborhood*-(1) *Performance requirement.* The site and neighborhood must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.

(2) *Acceptability criteria.* The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(m) *Sanitary condition*-(1) *Performance requirement.* The dwelling unit and its equipment must be in sanitary condition.

(2) *Acceptability criteria.* The dwelling unit and its equipment must be free of vermin and rodent infestation.

(n) *Smoke detectors performance requirement*-(1) Except as provided in paragraph (n)(2) of this section, each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of the dwelling unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system, designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).

(2) For units assisted prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors prior to April 24, 1993 in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992, (57 FR 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit).

982.402 Subsidy standards.

(a) *Purpose.* (1) The PHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions.

(2) For each family, the PHA determines the appropriate number of bedrooms under the PHA subsidy standards (family unit size).

(3) The family unit size number is entered on the voucher issued to the family. The PHA issues the family a voucher for the family unit size when a family is selected for participation in the program.

(b) *Determining family unit size.* The following requirements apply when the PHA determines family unit size under the PHA subsidy standards:

(1) The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.

(2) The subsidy standards must be consistent with space requirements under the housing quality standards (See 982.401(d)).

(3) The subsidy standards must be applied consistently for all families of like size and composition.

(4) A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.

(5) A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.

(6) Any live-in aide (approved by the PHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;

(7) Unless a live-in-aide resides with the family, the family unit size for any family consisting of a single person must be either a zero or one-bedroom unit, as determined under the PHA subsidy standards.

(8) In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances. (For a single person other than a disabled or elderly person or remaining family member, such PHA exception may not override the limitation in paragraph (b)(7) of this section.)

(c) *Effect of family unit size-maximum subsidy in voucher program.* The family unit size as determined for a family under the PHA subsidy standard is used to determine the maximum rent subsidy for a family assisted in the voucher program. For a voucher tenancy, the PHA establishes payment standards by number of bedrooms. The payment standard for a family shall be the lower of:

(1) The payment standard amount for the family unit size; or

(2) The payment standard amount for the unit size of the unit rented by the family.

(d) *Size of unit occupied by family*. (1) The family may lease an otherwise acceptable dwelling unit with fewer bedrooms than the family unit size. However, the dwelling unit must meet the applicable HQS space requirements.

(2) The family may lease an otherwise acceptable dwelling unit with more bedrooms than the family unit size. However, utility allowances must follow §982.517(d).

982.403 Terminating HAP contract when unit is too small.

(a) *Violation of HQS space standards.* (1) If the PHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible.

(2) If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

(b) *Termination.* When the PHA terminates the HAP contract under paragraph (a) of this section:

(1) The PHA must notify the family and the owner of the termination; and

(2) The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives such notice to the owner.

(3) The family may move to a new unit in accordance with §982.354.

982.404 Maintenance: Owner and family responsibility; PHA remedies.

(a) *Owner obligation.* (1) The owner must maintain the unit in accordance with HQS.

(2) If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take prompt and vigorous action to enforce the owner obligations. PHA remedies for such breach of the HQS include termination, suspension or reduction of housing assistance payments and termination of the PHAP contract.

(3) The PHA must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any PHA-approved extension).

(4) The owner is not responsible for a breach of the HQS that is not caused by the owner, and for which the family is responsible (as provided in 982.404(b) and 982.551(c)). (However, the PHA may terminate assistance to a family because of HQS breach caused by the family.)

(b) *Family obligation*. (1) The family is responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the tenant;

(ii) The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant; or

(iii) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

(2) If an HQS breach caused by the family is life threatening, the family must correct the defect within no more than 24 hours. For other family-caused defects, the family must correct the defect within no more than 30 calendar days (or any PHA-approved extension).

(3) If the family has caused a breach of the HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with 982.552.

982.405 PHA initial and periodic unit inspection.

(a) The PHA must inspect the unit leased to a family prior to the initial term of the lease, at least biennially during assisted occupancy, and at other times as needed, to determine if the unit meets the HQS. (See 982.305(b)(2) concerning timing of initial inspection by the PHA.)

(b) The PHA must conduct supervisory quality control HQS inspections.

(c) In scheduling inspections, the PHA must consider complaints and any other information brought to the attention of the PHA.

(d) The PHA must notify the owner of defects shown by the inspection.

(e) The PHA may not charge the family for an initial inspection or reinspection of the unit.

(f) The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. The PHA may establish a reasonable fee to owners for a reinspection if an owner notifies the PHA that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing pursuant to §982.404(a) was not corrected. The owner may not pass this fee along to the family. Fees collected under this paragraph will be included in a PHA's administrative fee reserve and may be used only for activities related to the provision of Section 8 Tenant-Based Rental Assistance.

(g) If a participant family or government official reports a condition that is life-threatening (i.e., the PHA would require the owner to make the repair within no more than 24 hours in accordance with §982.404(a)(3)), then the PHA must inspect the housing unit within 24 hours of when the PHA received the notification. If the reported condition is not life-threatening (i.e., the PHA would require the owner to make the repair within no more than 30 calendar days in accordance with §982.404(a)(3)), then the PHA must inspect the unit within 15 days of when the PHA received the notification. In the event of

extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

982.406 Use of alternative inspections.

(a) *In general.* (1) A PHA may comply with the inspection requirement in § 982.405(a) by relying on an alternative inspection (i.e., an inspection conducted for another housing assistance program) only if the PHA is able to obtain the results of the alternative inspection.

(2) If an alternative inspection method employs sampling, then a PHA may rely on such alternative inspection method to comply with the requirement in § 982.405(a) only if HCV units are included in the population of units forming the basis of the sample.

(3) Units in properties that are mixed finance properties assisted with project-based vouchers may be inspected at least triennially pursuant to 24 CFR 983.103(g).

(b) *Administrative plans.* A PHA relying on an alternative inspection to fulfill the requirement in § 982.405(a) must identify the alternative inspection method being used in the PHA's administrative plan. Such a change may be a significant amendment to the plan, in which case the PHA must follow its plan amendment and public notice requirements, in addition to meeting the requirements in § 982.406(c)(2), if applicable, before using the alternative inspection method.

(c) *Eligible inspection methods.* (1) A PHA may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs), or inspections performed by HUD, with no action other than amending its administrative plan.

(2) If a PHA wishes to rely on an inspection method other than a method listed in paragraph (c)(1) of this section, then, prior to amending its administrative plan, the PHA must submit to the Real Estate Assessment Center (REAC) a copy of the inspection method it wishes to use, along with its analysis of the inspection method that shows that the method "provides the same or greater protection to occupants of dwelling units" as would HQS.

(i) A PHA may rely upon such alternative inspection method only upon receiving approval from REAC to do so.

(ii) A PHA that uses an alternative inspection method approved under this paragraph must monitor changes to the standards and requirements applicable to such method. If any change is made to the alternative inspection method, then the PHA must submit to REAC a copy of the revised standards and requirements, along with a revised comparison to HQS. If the PHA or REAC determines that the revision would cause the alternative inspection to no longer meet or exceed HQS, then the PHA may no longer rely upon the alternative inspection method to comply with the inspection requirement at § 982.405(a).

(d) *Results of alternative inspection.*(1) In order for a PHA to rely upon the results of an alternative inspection to comply with the requirement at § 982.405(a), a property inspected pursuant to such method must meet the standards or requirements regarding housing quality or safety applicable to properties assisted under the program using the alternative inspection method. To make the determination of whether such standards or requirements are met, the PHA must adhere to the following procedures:

(i) If a property is inspected under an alternative inspection method, and the property receives a "pass" score, then the PHA may rely on that inspection to demonstrate compliance with the inspection requirement at § 982.405(a).

(ii) If a property is inspected under an alternative inspection method, and the property receives a "fail" score, then the PHA may not rely on that inspection to demonstrate compliance with the inspection requirement at § 982.405(a).

(iii) If a property is inspected under an alternative inspection method that does not employ a pass/fail determination—for example, in the case of a program where deficiencies are simply identified—then the PHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a "fail" score under HQS. If no such deficiency exists, then the PHA may rely on the inspection to demonstrate compliance with the inspection requirement at § 982.405(a); if such a deficiency does exist, then the PHA may not rely on the inspection to demonstrate such compliance.

(2) Under any circumstance described above in which a PHA is prohibited from relying on an alternative inspection method for a property, the PHA must, within a reasonable period of time, conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any identified deficiencies.

(e) *Records retention.* As with all other inspection reports, and as required by § 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be obtained by the PHA. Such reports must be available for HUD inspection for at least three years from the date of the latest inspection.

982.407 Enforcement of HQS.

Part 982 does not create any right of the family, or any party other than HUD or the PHA, to require enforcement of the HQS requirements by HUD or the PHA, or to assert any claim against HUD or the PHA, for damages, injunction or other relief, for alleged failure to enforce the HQS.

Subpart J Housing Assistance Payments Contract and Owner Responsibility

982.451 Housing assistance payments contract.

(a)(1) The HAP contract must be in the form required by HUD.

(2) The term of the HAP contract is the same as the term of the lease.

(b)(1) The amount of the monthly housing assistance payment by the PHA to the owner is determined by the PHA in accordance with HUD regulations and other requirements. The amount of the housing assistance payment is subject to change during the HAP contract term.

(2) The monthly housing assistance payment by the PHA is credited toward the monthly rent to owner under the family's lease.

(3) The total of rent paid by the tenant plus the PHA housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the PHA.

(4)(i) The part of the rent to owner which is paid by the tenant may not be more than:

(A) The rent to owner; minus

(B) The PHA housing assistance payment to the owner.

(ii) The owner may not demand or accept any rent payment from the tenant in excess of this maximum, and must immediately return any excess rent payment to the tenant.

(iii) The family is not responsible for payment of the portion of rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA. See 982.310(b).

(5)(i) The PHA must pay the housing assistance payment promptly when due to the owner in accordance with the HAP contract.

(ii) (A) The HAP contract shall provide for penalties against the PHA for late payment of housing assistance payments due to the owner if all the following circumstances apply:

(1) Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant;

(2) It is the owner's practice to charge such penalties for assisted and unassisted tenants; and

(3) The owner also charges such penalties against the tenant for late payment of family rent to owner.

(B) The PHA is not obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. The PHA may add HAP contract provisions which define when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

(iii) The PHA may only use the following sources to pay a late payment penalty from program receipts under the consolidated ACC: administrative fee income for the program; or the administrative fee reserve for the program. The PHA may not use other program receipts for this purpose.

982.452 Owner responsibilities.

(a) The owner is responsible for performing all of the owner's obligations under the HAP contract and the lease.

(b) The owner is responsible for:

(1) Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit. The fact that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of tenancy if the applicant otherwise qualifies for tenancy.

(2) Maintaining the unit in accordance with HQS, including performance of ordinary and extraordinary maintenance. For provisions on family maintenance responsibilities, see §982.404(a)(4).

(3) Complying with equal opportunity requirements.

(4) Preparing and furnishing to the PHA information required under the HAP contract.

(5) Collecting from the family:

(i) Any security deposit.

(ii) The tenant contribution (the part of rent to owner not covered by the housing assistance payment).

(iii) Any charges for unit damage by the family.

(6) Enforcing tenant obligations under the lease.

(7) Paying for utilities and services (unless paid by the family under the lease).

(c) For provisions on modifications to a dwelling unit occupied or to be occupied by a disabled person, see 24 CFR 100.203.

982.453 Owner breach of contract.

(a) Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:

(1) If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.

(2) If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).

(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in drug-related criminal activity.

(6) If the owner has committed any violent criminal activity.

(b) The PHA rights and remedies against the owner under the HAP contract include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

982.454 Termination of PHAP contract: Insufficient funding.

The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

982.455 Automatic termination of HAP contract.

The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.

982.456 Third parties.

(a) Even if the family continues to occupy the unit, the PHA may exercise any rights and remedies against the owner under the HAP contract.

(b)(1) The family is not a party to or third party beneficiary of the HAP contract. Except as provided in paragraph (b)(2) of this section, the family may not exercise any right or remedy against the owner under the HAP contract.

(2) The tenant may exercise any right or remedy against the owner under the lease between the tenant and the owner, including enforcement of the owner's obligations under the tenancy addendum (which is included both in the HAP contract between the PHA and the owner; and in the lease between the tenant and the owner.)

(c) The HAP contract shall not be construed as creating any right of the family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the PHA or the owner under the HAP contract.

Subpart K Rent And Housing Assistance Payment

982.501 Overview.

This subpart describes program requirements concerning the housing assistance payment and rent to owner under the HCV program.

982.503 Payment standard amount and schedule.

(a) *Payment standard schedule.* (1) HUD publishes the fair market rents for each market area in the United States (see part 888 of this title). The PHA must adopt a payment standard schedule that establishes voucher payment standard amounts for each FMR area in the PHA jurisdiction. For each FMR area, the PHA must establish payment standard amounts for each "unit size." Unit size is measured by number of bedrooms (zero-bedroom, one-bedroom, and so on).

(2) The payment standard amounts on the PHA schedule are used to calculate the monthly housing assistance payment for a family (§982.505).

(3) The PHA voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may establish a separate payment standard amount for each designated part of the FMR area.

(b) *Establishing payment standard amounts.* (1)(i) The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to establish a payment standard amount in that range ("basic range"). The PHA must revise the payment standard amount no later than 3 months following the effective date of the published FMR if a change is necessary to stay within the basic range.

(ii) The PHA may establish a separate payment standard amount within the basic range for a designated part of an FMR area.

(iii) A PHA that is not in a designated Small Area FMR area or has not opted to voluntarily implement Small Area FMRs under 24 CFR 888.113(c)(3) may establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published Small Area FMRs. The PHA may establish an exception payment standard up to 110 percent of the HUD published Small Area FMR for that ZIP code area. The PHA must notify HUD if it establishes an exception payment standard based on the Small Area FMR. The exception payment standard must apply to the entire ZIP code area.

(iv) At the request of a PHA administering the HCV program under Small Area FMRs under §888.113(c)(3), HUD may approve an exception payment standard for a Small Area FMR area above the 110 percent of the published FMR in accordance with conditions set forth by Notice in the Federal Register. The requirements of paragraph (c) of this section do not apply to these exception payment standard requests and approvals.

(v) The PHA may establish an exception payment standard of not more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with 24 CFR part 8 for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at §982.507.

(vi) The PHA may establish an exception payment standard of more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with 24 CFR part 8 for a family that includes a person with a disability after approval from HUD. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at §982.507.

(2) Except as described in paragraphs (b)(1)(iii) through (v) of this section, the PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount ("exception payment standard amount").

(c) *HUD approval of exception payment standard amount*—(1) *HUD discretion*. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the fair market rent area (called an "exception area"). HUD may approve an exception payment standard amount in accordance with this paragraph (c) of this section for all units, or for all units of a given unit size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount.

(2) *Above 110 percent of FMR to 120 percent of published FMR.* The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by the median rent method or the 40th percentile rent or the Small Area FMR method as described in paragraph (c)(2)(ii) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(i) *Median rent method.* In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(ii) *40th percentile rent or Small Area FMR method.* In this method, HUD determines that the area exception payment standard amount equals application of the 40th percentile of rents for standard quality rental housing in the exception area or the Small Area FMR. HUD determines whether the 40th percentile rent or Small Area FMR applies in accordance with the methodology described in 24 CFR 888.113 for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(3) *Above 120 percent of FMR.* (i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

(A) Such approval is necessary to prevent financial hardship for families;

(B) Such approval is supported by statistically representative rental housing survey data to justify HUD approval in accordance with the methodology described in §888.113 of this title; and

(C) Such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section.

(ii) For purposes of paragraph (c)(3) of this section, the term "place" is an incorporated place or a U.S. Census designated place. An incorporated place is established by State law and includes cities, boroughs, towns, and villages. A U.S. Census designated place is the statistical counterpart of an incorporated place.

(4) *Program justification.* (i) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(2) or paragraph (c)(3) of this section) if HUD determines that approval of such higher amount is needed either:

(A) To help families find housing outside areas of high poverty, or

(B) Because voucher holders have trouble finding housing for lease under the program within the term of the voucher.

(ii) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(3) of this section) after six months from the date of HUD approval of an exception payment standard pursuant to paragraph (c)(2) of this section for the area.

(5) *Population.* The total population of HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area, except when applying Small Area FMR exception areas under paragraph (b)(1)(iii) of this section.

(6) *Withdrawal or modification.* At any time, HUD may withdraw or modify approval to use an exception payment standard amount.

(d) *HUD approval of payment standard amount below the basic range.* HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income.

(e) *HUD approval of success rate payment standard amounts.* In order to increase the number of voucher holders who become participants, HUD may approve requests from PHAs whose FMRs are computed at the 40th percentile rent to establish higher, success rate payment standard amounts. A success rate payment standard amount is defined as any amount between 90 percent and 110 percent of the 50th percentile rent, calculated in accordance with the methodology described in §888.113 of this title.

(1) A PHA may obtain HUD Field Office approval of success rate payment standard amounts provided the PHA demonstrates to HUD that it meets the following criteria:

(i) Fewer than 75 percent of the families to whom the PHA issued rental vouchers during the most recent 6 month period for which there is success rate data available have become participants in the voucher program;

(ii) The PHA has established payment standard amounts for all unit sizes in the entire PHA jurisdiction within the FMR area at 110 percent of the published FMR for at least the 6 month period referenced in paragraph (e)(1)(i) of this section and up to the time the request is made to HUD; and

(iii) The PHA has a policy of granting automatic extensions of voucher terms to at least 90 days to provide a family who has made sustained efforts to locate suitable housing with additional search time.

(2) In determining whether to approve the PHA request to establish success rate payment standard amounts, HUD will consider whether the PHA has a SEMAP overall performance rating of "troubled". If a PHA does not yet have a SEMAP rating, HUD will consider the PHA's SEMAP certification.

(3) HUD approval of success rate payment standard amounts shall be for all unit sizes in the FMR area. A PHA may opt to establish a success rate payment standard amount for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(f) *Payment standard protection for PHAs that meet deconcentration objectives.* Paragraph (f) of this section applies only to a PHA with jurisdiction in an FMR area where the FMR had previously been set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area, pursuant to §888.113(i)(3), but is now set at the 40th percentile rent.

(1) Such a PHA may obtain HUD Field Office approval of a payment standard amount based on the 50th percentile rent if the PHA scored the maximum number of points on the deconcentration bonus indicator in §985.3(h) in the prior year, or in two of the last three years.

(2) HUD approval of payment standard amounts based on the 50th percentile rent shall be for all unit sizes in the FMR area that had previously been set at the 50th percentile rent pursuant to

§888.113(i)(3). A PHA may opt to establish a payment standard amount based on the 50th percentile rent for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(g) *HUD review of PHA payment standard schedules.*

(1) HUD will monitor rent burdens of families assisted in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.

(2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range.

982.504 Payment standard for family in restructured subsidized multifamily project.

(a) This section applies to HCV assistance if all the following conditions are applicable:

(1) Such HCV assistance is provided to a family pursuant to 24 CFR 401.421 when HUD has approved a restructuring plan, and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such families. Such tenant-based voucher assistance is provided for a family previously receiving project-based assistance in an eligible project (as defined in §401.2 of this title) at the time when the project-based assistance terminates.

(2) The family chooses to remain in the restructured project with HCV assistance under the program and leases a unit that does not exceed the family unit size;

(3) The lease for such assisted tenancy commences during the first year after the project-based assistance terminates.

(b) The initial payment standard for the family under such initial lease is the sum of the reasonable rent to owner for the unit plus the utility allowance for tenant-paid utilities. (Determination of such initial payment standard for the family is not subject to paragraphs (c)(1) and (c)(2) of §982.505. Except for determination of the initial payment standard as specifically provided in paragraph (b) of this section, the payment standard and housing assistance payment for the family during the HAP contract term shall be determined in accordance with §982.505.)

982.505 How to calculate housing assistance payment.

(a) *Use of payment standard.* A payment standard is used to calculate the monthly housing assistance payment for a family. The "payment standard" is the maximum monthly subsidy payment.

(b) *Amount of monthly housing assistance payment.* The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the lower of:

(1) The payment standard for the family minus the total tenant payment; or

(2) The gross rent minus the total tenant payment.

(c) *Payment standard for family.* (1) The payment standard for the family is the lower of:

(i) The payment standard amount for the family unit size; or

(ii) The payment standard amount for the size of the dwelling unit rented by the family.

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with §982.503 (including an exception payment standard amount as determined in accordance with §982.503(b)(2) and §982.503(c)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. The payment standard for the family shall be calculated in accordance with this paragraph and paragraph (c)(1) of this section.

(3) *Decrease in the payment standard amount during the HAP contract term.* If the amount on the payment standard schedule is decreased during the term of the HAP contract, the PHA is not required to reduce the payment standard amount used to calculate the subsidy for the families under HAP contract for as long as the HAP contract remains in effect.

(i) If the PHA chooses to reduce the payment standard for the families currently under HAP contract during the HAP contract term in accordance with their administrative plan, the initial reduction to the payment standard amount used to calculate the monthly housing assistance payment for the family may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount.

(ii) The PHA may choose to reduce the payment standard amount for families that remain under HAP contract to the current payment standard amount in effect on the PHA voucher payment standard schedule, or may reduce the payment standard amount to an amount that is higher than the normally applicable payment standard amount on the PHA voucher payment standard schedule. The PHA may further reduce the payment standard amount for the families during the term of the HAP contract, provided the subsequent reductions continue to result in a payment standard amount that meets or exceeds the normally applicable payment standard amount on the PHA voucher payment standard schedule.

(iii) The PHA must provide the family with at least 12 months' notice that the payment standard is being reduced during the term of the HAP contract before the effective date of the change.

(iv) The PHA shall administer decreases in the payment standard amount during the term of the HAP contract in accordance with the PHA policy as described in the PHA administrative plan. The PHA may establish different policies for designated areas within their jurisdiction (e.g., for different zip code areas), but the PHA administrative policy on decreases to payment standards during the term of the HAP contract applies to all families under HAP contract at the time of the effective date of decrease in the payment standard within that designated area. The PHA may not limit or otherwise establish different protections or policies for certain families under HAP contract.

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

(5) *Change in family unit size during the HAP contract term.* Irrespective of any increase or decrease in the payment standard amount, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard amount for the family beginning at the family's first regular reexamination following the change in family unit size.

(d) *PHA approval of higher payment standard for the family as a reasonable accommodation.* If the family includes a person with disabilities and requires a payment standard above the basic range, as a reasonable accommodation for such person, in accordance with part 8 of this title, the PHA may establish a payment standard for the family of not more than 120 percent of the FMR. A PHA may establish a payment standard greater than 120 percent of the FMR by submitting a request to HUD.

982.506 Negotiating rent to owner.

The owner and the family negotiate the rent to owner. At the family's request, the PHA must help the family negotiate the rent to owner.

982.507 Rent to owner: Reasonable rent.

(a) *PHA determination.* (1) Except as provided in paragraph (c) of this section, the PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

(2) The PHA must redetermine the reasonable rent:

(i) Before any increase in the rent to owner;

(ii) If there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary; or

(iii) If directed by HUD.

(3) The PHA may also redetermine the reasonable rent at any other time.

(4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the PHA.

(b) *Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Units assisted by low-income housing tax credits or assistance under HUD's HOME Investment Partnerships (HOME) program.* (1) *General.* For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue Code of 1986 or receiving assistance under HUD's HOME Program (for which the regulations are found in 24 CFR part 92), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

(2) *LIHTC.* If the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations and the rent shall not exceed the lesser of the:

(i) Reasonable rent as determined pursuant to a rent comparability study; and

(ii) The payment standard established by the PHA for the unit size involved.

(3) *HOME Program.* [Reserved]

(d) *Owner certification of rents charged for other units.* By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

982.508 Maximum family share at initial occupancy.

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.

982.509 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.

982.510 Other fees and charges.

(a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.

(b) The lease 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.

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

982.514 Distribution of housing assistance payment.

The monthly housing assistance payment is distributed as follows:

(a) The PHA pays the owner the lesser of the housing assistance payment or the rent to owner.

(b) If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the housing assistance payment ('utility reimbursement') either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

(c) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(1) The PHA will have the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling $45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement. PHAs exercising this option must have a hardship policy in place for tenants.

(2) If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

982.515 Family share: Family responsibility.

(a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(b) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.

(c) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

982.516 Family income and composition: Annual and interim examinations.

(a) *PHA responsibility for reexamination and verification.*

(1) The PHA must conduct a reexamination of family income and composition at least annually.

(2) Except as provided in paragraph (a)(3) of this section, the PHA must obtain and document in the tenant file third-party verification of the following factors, or must document in the tenant file why third-party verification was not available:

(i) Reported family annual income;

(ii) The value of assets;

(iii) Expenses related to deductions from annual income; and

(iv) Other factors that affect the determination of adjusted income.

(3) For a family with net assets equal to or less than $5,000, a PHA may accept a family's declaration that it has net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration.

(i) The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

(ii) A PHA must obtain third-party verification of all family assets every 3 years.

(b) *Streamlined income determination*—(1) *General.* A PHA may elect to apply a streamlined income determination to families receiving fixed income as described in paragraph (b)(3) of this section.

(2) *Definition of "fixed income".* For purposes of this section, "fixed income" means periodic payments at reasonably predictable levels from one or more of the following sources:

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

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

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

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

(3) *Method of streamlined income determination.* A PHA using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(i) When 90 percent or more of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA or COLAs to the family's fixed

income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, the PHA is not required to make appropriate adjustments pursuant to paragraph (a) of this section.

(ii) When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA to each of the family's sources of fixed income individually. The PHA must determine all other income pursuant to paragraph (a) of this section.

(4) *COLA rate applied by PHAs.* PHAs using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the owner must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(5) *Triennial verification.* For any income determined pursuant to a streamlined income determination, a PHA must obtain third-party verification of all income amounts every 3 years.

(c) *Interim reexaminations.* (1) At any time, the PHA may conduct an interim reexamination of family income and composition.

(2) At any time, the family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must make the interim determination within a reasonable time after the family request.

(3) Interim examinations must be conducted in accordance with policies in the PHA administrative plan.

(d) *Family reporting of change.* The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(e) *Effective date of reexamination.* (1) The PHA must adopt policies prescribing how to determine the effective date of a change in the housing assistance payment resulting from an interim redetermination.

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment in accordance with §982.505.

(f) *Accuracy of family income data.* The PHA must establish procedures that are appropriate and necessary to assure that income data provided by applicant or participant families is complete and accurate.

(g) *Execution of release and consent.* (1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a HUD-approved release and consent form (including any release and consent as required under §5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The PHA and HUD must limit the use or disclosure of information obtained from a family or from another source pursuant to this release and consent to purposes directly in connection with administration of the program.

982.517 Utility allowance schedule.

(a) *Maintaining schedule.* (1) The PHA must maintain a utility allowance schedule for all tenant-paid utilities (except telephone), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)).

(2) The PHA must give HUD a copy of the utility allowance schedule. At HUD's request, the PHA also must provide any information or procedures used in preparation of the schedule.

(b) *How allowances are determined.* (1) The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole and current utility rates.

(2)(i) A PHA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. However, the PHA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

(ii) In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); and other specified housing services. The PHA must provide a utility allowance for tenant-paid air-conditioning costs if the majority of housing units in the market provide centrally air-conditioned units or there is appropriate wiring for tenant-installed air conditioners.

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms), and unit types (e.g., apartment, row-house, town house, single-family detached, and manufactured housing) that are typical in the community.

(4) The utility allowance schedule must be prepared and submitted in accordance with HUD requirements on the form prescribed by HUD.

(c) *Revisions of utility allowance schedule.* (1) A PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised. The PHA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.

(2) At HUD's direction, the PHA must revise the utility allowance schedule to correct any errors, or as necessary to update the schedule.

(d) *Use of utility allowance schedule.* The PHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the family unit size as determined under the PHA subsidy standards. In cases where the unit size leased exceeds the family unit size as determined under the PHA subsidy standards as a result of a reasonable accommodation, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

(e) *Higher utility allowance as reasonable accommodation for a person with disabilities.* On request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability.

982.521 Rent to owner in subsidized project.

(a) *Applicability to subsidized project.* This section applies to a program tenancy in any of the following types of federally subsidized project:

(1) An insured or non-insured Section 236 project;

(2) A Section 202 project;

(3) A Section 221(d)(3) below market interest rate (BMIR) project; or

(4) A Section 515 project of the Rural Development Administration.

(b) *How rent to owner is determined.* The rent to owner is the subsidized rent as determined in accordance with requirements for the applicable federal program listed in paragraph (a) of this section. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see §982.309).

Subpart L Family Obligations; Denial and Termination of Assistance

982.551 Obligations of participant.

(a) *Purpose.* This section states the obligations of a participant family under the program.

(b) *Supplying required information*. (1) The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). 'Information' includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

(3) The family must disclose and verify social security numbers (as provided by part 5, subpart B, of this title) and must sign and submit consent forms for obtaining information in accordance with part 5, subpart B, of this title.

(4) Any information supplied by the family must be true and complete.

(c) *HQS breach caused by family.* The family is responsible for an HQS breach caused by the family as described in 982.404(b).

(d) *Allowing PHA inspection.* The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice.

(e) *Violation of lease.* The family may not commit any serious or repeated violation of the lease. Under 24 CFR 5.2005(c), an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated lease violation by the victim, or threatened victim, of the domestic violence, dating violence, sexual assault, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim.

(f) *Family notice of move or lease termination.* The family must notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See 982.354(d).

(g) *Owner eviction notice.* The family must promptly give the PHA a copy of any owner eviction notice.

(h) *Use and occupancy of unit*. (1) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

(2) The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

(3) The family must promptly notify the PHA if any family member no longer resides in the unit.

(4) If the PHA has given approval, a foster child or a live-in-aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining when PHA consent may be given or denied.

(5) Members of the household may engage in legal profitmaking activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family.

(6) The family must not sublease or let the unit.

(7) The family must not assign the lease or transfer the unit.

(i) *Absence from unit.* The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit.

(j) *Interest in unit.* The family must not own or have any interest in the unit.

(k) *Fraud and other program violation.* The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

(l) *Crime by household members*. The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see §982.553). Under 24 CFR 5.2005(b)(2), criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household, or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or an affiliated individual of the tenant, as defined in 24 CFR 5.2003, is the victim.

(m) *Alcohol abuse by household members.* The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

(n) *Other housing assistance.* An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.

982.552 PHA denial or termination of assistance for the family.

(a) *Action or inaction by family.* (1) A PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or §982.553. The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

(2) Denial of assistance for an applicant may include any or all of the following: denying listing on the PHA waiting list, denying or withdrawing a voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.

(3) Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures.

(4) This section does not limit or affect exercise of the PHA rights and remedies against the owner under the HAP contract, including termination, suspension or reduction of housing assistance payments, or termination of the HAP contract.

(b) *Requirement to deny admission or terminate assistance.* (1) For provisions on denial of admission and termination of assistance for illegal drug use, other criminal activity, and alcohol abuse that would threaten other residents, see §982.553.

(2) The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.

(3) The PHA must deny admission to the program for an applicant, or terminate program assistance for a participant, if any member of the family fails to sign and submit consent forms for obtaining information in accordance with part 5, subparts B and F of this title.

(4) The family must submit required evidence of citizenship or eligible immigration status. See part 5 of this title for a statement of circumstances in which the PHA must deny admission or terminate program assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures.

(5) The PHA must deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 CFR 5.612.

(c) *Authority to deny admission or terminate assistance*-(1) *Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see §982.551). See §982.553 concerning denial or termination of assistance for crime by family members.

(ii) If any member of the family has been evicted from federally assisted housing in the last five years;

(iii) If a PHA has ever terminated assistance under the program for any member of the family.

(iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program (see also §982.553(a)(1));

(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

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

(vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

(viii) If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation.

(ix) If the family has engaged in or threatened abusive or violent behavior toward PHA personnel.

(x) If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

(xi) If the family has been engaged in criminal activity or alcohol abuse as described in §982.553.

(2) *Consideration of circumstances.* In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

(iii) In determining whether to deny admission or terminate assistance for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(iv) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(v) *Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(d) *Information for family.* The PHA must give the family a written description of:

(1) Family obligations under the program.

(2) The grounds on which the PHA may deny or terminate assistance because of family action or failure to act.

(3) The PHA informal hearing procedures.

(e) *Applicant screening.* The PHA may at any time deny program assistance for an applicant in accordance with the PHA policy, as stated in the PHA administrative plan, on screening of applicants for family behavior or suitability for tenancy.

982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) *Denial of admission*—1) P*rohibiting admission of drug criminals.* (i) The PHA must prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that prohibit admission if:

(A) The PHA determines that any household member is currently engaging in illegal use of a drug;

(B) The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(C) Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals*—(i) *Mandatory prohibition.* The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

(ii) *Permissive prohibitions.* (A) The PHA may prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(B) The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (a)(2)(i) of this section ("reasonable time").

(C) If the PHA previously denied admission to an applicant because a member of the household engaged in criminal activity, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(1) The PHA would have "sufficient evidence" if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(2) For purposes of this section, a household member is "currently engaged in" criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) *Terminating assistance*—(1) *Terminating assistance for drug criminals.* (i) The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under §982.551 not to engage in any drug-related criminal activity.

(2) *Terminating assistance for other criminals.* The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under §982.551 not to engage in violent criminal activity.

(3) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Evidence of criminal activity.* The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) *Use of criminal record*—(1) *Denial.* If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the subject of the record and the applicant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with §982.554. (See part 5, subpart J for provision concerning access to criminal records.)

(2) *Termination of assistance.* If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record in accordance with §982.555.

(3) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

(e) The requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

982.554 Informal review for applicant.

(a) *Notice to applicant.* The PHA must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the PHA decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

(b) *Informal review process.* The PHA must give an applicant an opportunity for an informal review of the PHA decision denying assistance to the applicant. The administrative plan must state the PHA procedures for conducting an informal review. The PHA review procedures must comply with the following:

(1) The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(2) The applicant must be given an opportunity to present written or oral objections to the PHA decision.

(3) The PHA must notify the applicant of the PHA final decision after the informal review, including a brief statement of the reasons for the final decision.

(c) *When informal review is not required.* The PHA is not required to provide the applicant an opportunity for an informal review for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) A determination of the family unit size under the PHA subsidy standards.

(4) A PHA determination not to approve an extension of the voucher term.

(5) A PHA determination not to grant approval of the tenancy.

(6) A PHA determination that a unit selected by the applicant is not in compliance with HQS.

(7) A PHA determination that the unit is not in accordance with HQS because of the family size or composition.

(d) *Restrictions on assistance for noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

982.555 Informal hearing for participant.

(a) *When hearing is required.* (1) A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.

(iii) A determination of the family unit size under the PHA subsidy standards.

(iv) A determination to terminate assistance for a participant family because of the family's action or failure to act (see §982.552).

(v) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) Establishment of the PHA schedule of utility allowances for families in the program.

(4) A PHA determination not to approve an extension of the voucher term.

(5) A PHA determination not to approve a unit or tenancy.

(6) A PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in §982.551(c).)

(7) A PHA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the PHA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

(c) *Notice to family.* (1) In the cases described in paragraphs (a)(1)(i), (ii) and (iii) of this section, the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:

(i) Contain a brief statement of reasons for the decision,

(ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and

(iii) State the deadline for the family to request an informal hearing.

(d) *Expeditious hearing process.* Where a hearing for a participant family is required under this section, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) *Hearing procedures*—(1) *Administrative plan.* The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) *Discovery*—(i) *By family.* The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

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

(iii) *Documents.* The term "documents" includes records and regulations.

(3) *Representation of family.* At its own expense, the family may be represented by a lawyer or other representative.

(4) *Hearing officer: Appointment and authority.* (i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) *Evidence.* The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) *Issuance of decision.* The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) *Effect of decision.* The PHA is not bound by a hearing decision:

(1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

(g) *Restrictions on assistance to noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

Subpart M Special Housing Types

982.601 Overview.

(a) *Special housing types.* This subpart describes program requirements for special housing types. The following are the special housing types:

(1) Single room occupancy (SRO) housing;

(2) Congregate housing;

(3) Group home;

(4) Shared housing;

(5) Manufactured home;

(6) Cooperative housing (excluding families that are not cooperative members); and

(7) Homeownership option.

(b) *PHA choice to offer special housing type.* (1) The PHA may permit a family to use any of the following special housing types in accordance with requirements of the program: single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home when the family owns the home and leases the manufactured home space, cooperative housing or homeownership option.

(2) In general, the PHA is not required to permit families (including families that move into the PHA program under portability procedures) to use any of these special housing types, and may limit the number of families using special housing types.

(3) The PHA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

(4) For occupancy of a manufactured home, see §982.620(a).

(c) *Program funding for special housing types.* (1) HUD does not provide any additional or designated funding for special housing types, or for a specific special housing type (e.g., the homeownership option). Assistance for special housing types is paid from program funding available for the PHA's tenant-based program under the consolidated annual contributions contract.

(2) The PHA may not set aside program funding or program slots for special housing types or for a specific special housing type.

(d) *Family choice of housing and housing type.* The family chooses whether to use housing that qualifies as a special housing type under this subpart, or as any specific special housing type, or to use other eligible housing in accordance with requirements of the program. The PHA may not restrict the family's freedom to choose among available units in accordance with §982.353.

(e) *Applicability of requirements.* (1) Except as modified by this subpart, the requirements of other subparts of this part apply to the special housing types.

(2) Provisions in this subpart only apply to a specific special housing type. The housing type is noted in the title of each section.

(3) Housing must meet the requirements of this subpart for a single special housing type specified by the family. Such housing is not subject to requirements for other special housing types. A single unit cannot be designated as more than one special housing type.

Single Room Occupancy (SRO)

982.602 SRO: Who may reside in an SRO?

A single person may reside in an SRO housing unit.

982.603 SRO: Lease and HAP contract.

For SRO housing, there is a separate lease and HAP contract for each assisted person.

982.604 SRO: Voucher housing assistance payment.

(a) For a person residing in SRO housing, the payment standard is 75 percent of the zero-bedroom payment standard amount on the PHA payment standard schedule. For a person residing in SRO housing in an exception area, the payment standard is 75 percent of the HUD-approved zero-bedroom exception payment standard amount.

(b) The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

982.605 SRO: Housing quality standards.

(a) *HQS standards for SRO.* The HQS in 982.401 apply to SRO housing. However, the standards in this section apply in place of 982.401(b) (sanitary facilities), 982.401(c) (food preparation and refuse disposal), and 982.401(d) (space and security). Since the SRO units will not house children, the housing quality standards in 982.401(j), concerning lead-based paint, do not apply to SRO housing.

(b) *Performance requirements*. (1) SRO housing is subject to the additional performance requirements in this paragraph (b).

(2) Sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

(i) *Sanitary facilities.*

(A) At least one flush toilet that can be used in privacy, lavatory basin, and bathtub or shower, in proper operating condition, must be supplied for each six persons or fewer residing in the SRO housing.

(B) If SRO units are leased only to males, flush urinals may be substituted for not more than one-half the required number of flush toilets. However, there must be at least one flush toilet in the building.

(C) Every lavatory basin and bathtub or shower must be supplied at all times with an adequate quantity of hot and cold running water.

(D) All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

(E) Sanitary facilities must be reasonably accessible from a common hall or passageway to all persons sharing them. These facilities may not be located more than one floor above or below the SRO unit. Sanitary facilities may not be located below grade unless the SRO units are located on that level.

(ii) *Space and security.*

(A) No more than one person may reside in an SRO unit.

(B) An SRO unit must contain at least one hundred ten square feet of floor space.

(C) An SRO unit must contain at least four square feet of closet space for each resident (with an unobstructed height of at least five feet). If there is less closet space, space equal to the amount of the deficiency must be subtracted from the area of the habitable room space when determining the amount of floor space in the SRO unit. The SRO unit must contain at least one hundred ten square feet of remaining floor space after subtracting the amount of the deficiency in minimum closet space.

(D) Exterior doors and windows accessible from outside an SRO unit must be lockable.

(3) *Access*.

(i) Access doors to an SRO unit must have locks for privacy in proper operating condition.

(ii) An SRO unit must have immediate access to two or more approved means of exit, appropriately marked, leading to safe and open space at ground level, and any means of exit required by State and local law.

(iii) The resident must be able to access an SRO unit without passing through any other unit.

(4) Sprinkler system. A sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require must be installed in each building. The term 'major spaces' means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

Congregate Housing

982.606 Congregate housing: Who may reside in congregate housing.

(a) An elderly person or a person with disabilities may reside in a congregate housing unit.

(b)(1) If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities.

(2) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See 982.316 concerning occupancy by a live-in aide.

982.607 Congregate housing: Lease and HAP contract.

For congregate housing, there is a separate lease and HAP contract for each assisted family.

982.608 Congregate housing: Voucher housing assistance payment.

(a) Unless there is a live-in aide:

(1) For a family residing in congregate housing, the payment standard is the zero-bedroom payment standard amount on the PHA payment standard schedule. For a family residing in congregate housing in an exception area, the payment standard is the HUD-approved zero-bedroom exception payment standard amount.

(2) However, if there are two or more rooms in the unit (not including kitchen or sanitary facilities), the payment standard for a family residing in congregate housing is the one-bedroom payment standard amount.

(b) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

982.609 Congregate housing: Housing quality standards.

(a) *HQS standards for congregate housing.* The HQS in 982.401 apply to congregate housing. However, the standards in this section apply in place of 982.401(c) (food preparation and refuse disposal). Congregate housing is not subject to the HQS acceptability requirement in 982.401(d)(2)(i) that the dwelling unit must have a kitchen area.

(b) *Food preparation and refuse disposal:* Additional performance requirements. The following additional performance requirements apply to congregate housing:

(1) The unit must contain a refrigerator of appropriate size.

(2) There must be central kitchen and dining facilities on the premises. These facilities:

(i) Must be located within the premises, and accessible to the residents;

(ii) Must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(iii) Must be used to provide a food service that is provided for the residents, and that is not provided by the residents; and

(iv) Must be for the primary use of residents of the congregate units and be sufficient in size to accommodate the residents.

(3) There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

Group Home

982.610 Group home: Who may reside in a group home.

(a) An elderly person or a person with disabilities may reside in a State-approved group home.

(b)(1) If approved by the PHA, a live-in aide may reside with a person with disabilities.

(2) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See 982.316 concerning occupancy by a live-in aide.

(c) Except for a live-in aide, all residents of a group home, whether assisted or unassisted, must be elderly persons or persons with disabilities.

(d) Persons residing in a group home must not require continual medical or nursing care.

(e) Persons who are not assisted under the tenant-based program may reside in a group home.

(f) No more than 12 persons may reside in a group home. This limit covers all persons who reside in the unit, including assisted and unassisted residents and any live-in aide.

982.611 Group home: Lease and HAP contract.

For assistance in a group home, there is a separate HAP contract and lease for each assisted person.

982.612 Group home: State approval of group home.

A group home must be licensed, certified, or otherwise approved in writing by the State (e.g., Department of Human Resources, Mental Health, Retardation, or Social Services) as a group home for elderly persons or persons with disabilities.

982.613 Group home: Rent and voucher housing assistance payment.

(a) *Meaning of pro-rata portion.* For a group home, the term 'pro-rata portion' means the ratio derived by dividing the number of persons in the assisted household by the total number of residents (assisted and unassisted) residing in the group home. The number of persons in the assisted household equals one assisted person plus any PHA-approved live-in aide.

(b) *Rent to owner: Reasonable rent limit*. (1) The rent to owner for an assisted person may not exceed the pro-rata portion of the reasonable rent for the group home.

(2) The reasonable rent for a group home is determined in accordance with 982.507. In determining reasonable rent for the group home, the PHA must consider whether sanitary facilities, and facilities for food preparation and service, are common facilities or private facilities.

(c) *Payment standard*. (1) Family unit size.

(i) Unless there is a live-in aide, the family unit size is zero or one bedroom.

(ii) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

(2) The payment standard for a person who resides in a group home is the lower of:

(i) The payment standard amount on the PHA payment standard schedule for the family unit size; or

(ii) The pro-rata portion of the payment standard amount on the PHA payment standard schedule for the group home size.

(iii) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

(d) *Utility allowance.* The utility allowance for each assisted person residing in a group home is the pro-rata portion of the utility allowance for the group home unit size.

982.614 Group home: Housing quality standards.

(a) *Compliance with HQS.* The PHA may not give approval to reside in a group home unless the unit, including the portion of the unit available for use by the assisted person under the lease, meets the housing quality standards.

(b) *Applicable HQS standards*. (1) The HQS in 982.401 apply to assistance in a group home. However, the standards in this section apply in place of 982.401(b) (sanitary facilities), 982.401(c) (food preparation and refuse disposal), 982.401(d) (space and security), 982.401(g) (structure and materials) and 982.401(l) (site and neighborhood).

(2) The entire unit must comply with the HQS.

(c) *Additional performance requirements.* The following additional performance requirements apply to a group home:

(1) Sanitary facilities.

(i) There must be a bathroom in the unit. The unit must contain, and an assisted resident must have ready access to:

(A) A flush toilet that can be used in privacy;

(B) A fixed basin with hot and cold running water; and

(C) A shower or bathtub with hot and cold running water.

(ii) All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

(iii) The unit may contain private or common sanitary facilities. However, the facilities must be sufficient in number so that they need not be shared by more than four residents of the group home.

(iv) Sanitary facilities in the group home must be readily accessible to and usable by residents, including persons with disabilities.

(2) Food preparation and service.

(i) The unit must contain a kitchen and a dining area. There must be adequate space to store, prepare, and serve foods in a sanitary manner.

(ii) Food preparation and service equipment must be in proper operating condition. The equipment must be adequate for the number of residents in the group home. The unit must contain the following equipment:

(A) A stove or range, and oven;

(B) A refrigerator; and

(C) A kitchen sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.

(iii) There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

(iv) The unit may contain private or common facilities for food preparation and service.

(3) Space and security.

(i) The unit must provide adequate space and security for the assisted person.

(ii) The unit must contain a living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space. The unit must contain at least one bedroom of appropriate size for each two persons.

(iii) Doors and windows that are accessible from outside the unit must be lockable.

(4) Structure and material.

(i) The unit must be structurally sound to avoid any threat to the health and safety of the residents, and to protect the residents from the environment.

(ii) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other significant damage. The roof structure must be firm, and the roof must be weathertight. The exterior or wall structure and exterior wall surface may not have any serious defects such as serious leaning, buckling, sagging, cracks or large holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., must not present a danger of tripping or falling. Elevators must be maintained in safe operating condition.

(iii) The group home must be accessible to and usable by a resident with disabilities.

(5) Site and neighborhood. The site and neighborhood must be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the residents. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mud slides, abnormal air pollution, smoke or dust, excessive noise, vibrations or vehicular traffic, excessive accumulations of trash, vermin or rodent infestation, or fire hazards. The unit must be located in a residential setting.

Shared Housing

982.615 Shared housing: Occupancy.

(a) *Sharing a unit.* An assisted family may reside in shared housing. In shared housing, an assisted family shares a unit with the other resident or residents of the unit. The unit may be a house or an apartment.

(b) *Who may share a dwelling unit with assisted family*? (1) If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See 982.316 concerning occupancy by a live-in aide.

(2) Other persons who are assisted under the tenant-based program, or other persons who are not assisted under the tenant-based program, may reside in a shared housing unit.

(3) The owner of a shared housing unit may reside in the unit. A resident owner may enter into a HAP contract with the PHA. However, housing assistance may not be paid on behalf of an owner. An assisted person may not be related by blood or marriage to a resident owner.

982.616 Shared housing: Lease and HAP contract.

For assistance in a shared housing unit, there is a separate HAP contract and lease for each assisted family.

982.617 Shared housing: Rent and voucher housing assistance payment.

(a) *Meaning of pro-rata portion.* For shared housing, the term 'pro-rata portion' means the ratio derived by dividing the number of bedrooms in the private space available for occupancy by a family by the total number of bedrooms in the unit. For example, for a family entitled to occupy three bedrooms in a five bedroom unit, the ratio would be 3/5.

(b) *Rent to owner: Reasonable rent.* (1) The rent to owner for the family may not exceed the pro-rata portion of the reasonable rent for the shared housing dwelling unit.

(2) The reasonable rent is determined in accordance with 982.507.

(c) *Payment standard.* The payment standard for a family that resides in a shared housing is the lower of:

(1) The payment standard amount on the PHA payment standard schedule for the family unit size; or

(2) The pro-rata portion of the payment standard amount on the PHA payment standard schedule for the size of the shared housing unit.

(d) *Utility allowance.* The utility allowance for an assisted family residing in shared housing is the pro-rata portion of the utility allowance for the shared housing unit.

982.618 Shared housing: Housing quality standards.

(a) *Compliance with HQS.* The PHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

(b) *Applicable HQS standards.* The HQS in 982.401 apply to assistance in shared housing. However, the HQS standards in this section apply in place of 982.401(d) (space and security).

(c) *Facilities available for family.* The facilities available for the use of an assisted family in shared housing under the family's lease must include (whether in the family's private space or in the common space) a living room, sanitary facilities in accordance with 982.401(b), and food preparation and refuse disposal facilities in accordance with 982.401(c).

(d) *Space and security: Performance requirements*. (1) The entire unit must provide adequate space and security for all its residents (whether assisted or unassisted).

(2)(i) Each unit must contain private space for each assisted family, plus common space for shared use by the residents of the unit. Common space must be appropriate for shared use by the residents.

(ii) The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family may not be less than the family unit size.

(iii) A zero or one bedroom unit may not be used for shared housing.

Cooperative

982.619 Cooperative housing.

(a) *Assistance in cooperative housing.* This section applies to rental assistance for a cooperative member residing in cooperative housing. However, this section does not apply to:

(1) Assistance for a cooperative member under the homeownership option pursuant to 982.625 through 982.641; or

(2) Rental assistance for a family that leases a cooperative housing unit from a cooperative member (such rental assistance is not a special housing type, and is subject to requirements in other subparts of this part 982).

(b) *Rent to owner*. (1) The reasonable rent for a cooperative unit is determined in accordance with 982.507. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(2) The carrying charge consists of the amount assessed to the member by the cooperative for occupancy of the housing. The carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. However, the carrying charge does not include down-payments or other payments to purchase the cooperative unit, or to amortize a loan to the family for this purpose.

(3) Gross rent is the carrying charge plus any utility allowance.

(4) Adjustments are applied to the carrying charge as determined in accordance with this section.

(5) The occupancy agreement/lease and other appropriate documents must provide that the monthly carrying charge is subject to Section 8 limitations on rent to owner.

(c) *Housing assistance payment.* The amount of the housing assistance payment is determined in accordance with subpart K of this part.

(d) *Maintenance*. (1) During the term of the HAP contract between the PHA and the cooperative, the dwelling unit and premises must be maintained in accordance with the HQS. If the dwelling unit and premises are not maintained in accordance with the HQS, the PHA may exercise all available remedies, regardless of whether the family or the cooperative is responsible for such breach of the HQS. PHA remedies for breach of the HQS include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments and termination of the HAP contract.

(2) The PHA may not make any housing assistance payments if the contract unit does not meet the HQS, unless any defect is corrected within the period specified by the PHA and the PHA verifies the correction. If a defect is life-threatening, the defect must be corrected within no more than 24 hours. For other defects, the defect must be corrected within the period specified by the PHA.

(3) The family is responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to perform any maintenance for which the family is responsible in accordance with the terms of the cooperative occupancy agreement between the cooperative member and the cooperative;

(ii) The family fails to pay for any utilities that the cooperative is not required to pay for, but which are to be paid by the cooperative member;

(iii) The family fails to provide and maintain any appliances that the cooperative is not required to provide, but which are to be provided by the cooperative member; or

(iv) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

(4) If the family has caused a breach of the HQS for which the family is responsible, the PHA must take prompt and vigorous action to enforce such family obligations. The PHA may terminate assistance for violation of family obligations in accordance with 982.552.

(5) Section 982.404 does not apply to assistance for cooperative housing under this section.

(e) *Live-in aide.* (1) If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See 982.316 concerning occupancy by a live-in aide.

(2) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

Manufactured Home

982.620 Manufactured home: Applicability of requirements.

(a) *Assistance for resident of manufactured home*.

(1) A family may reside in a manufactured home with assistance under the program.

(2) The PHA must permit a family to lease a manufactured home and space with assistance under the program.

(3) The PHA may provide assistance for a family that owns the manufactured home and leases only the space. The PHA is not required to provide such assistance under the program.

(b) *Applicability.* (1) The HQS in 982.621 always apply when assistance is provided to a family occupying a manufactured home (under paragraph (a)(2) or (a)(3) of this section).

(2) Sections 982.622 to 982.624 only apply when assistance is provided to a manufactured home owner to lease a manufactured home space.

(c) *Live-in aide*. (1) If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See 982.316 concerning occupancy by a live-in aide.

(2) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

982.621 Manufactured home: Housing quality standards.

A manufactured home must meet all the HQS performance requirements and acceptability criteria in 982.401. A manufactured home also must meet the following requirements:

(a) Performance requirement. A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage.

(b) Acceptability criteria. A manufactured home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

Manufactured Home Space Rental

982.622 Manufactured home space rental: Rent to owner.

(a) *What is included*. (1) Rent to owner for rental of a manufactured home space includes payment for maintenance and services that the owner must provide to the tenant under the lease for the space.

(2) Rent to owner does not include the costs of utilities and trash collection for the manufactured home. However, the owner may charge the family a separate fee for the cost of utilities or trash collection provided by the owner.

(b) *Reasonable rent*. (1) During the assisted tenancy, the rent to owner for the manufactured home space may not exceed a reasonable rent as determined in accordance with this section. Section 982.503 is not applicable.

(2) The PHA may not approve a lease for a manufactured home space until the PHA determines that the initial rent to owner for the space is a reasonable rent. At least annually during the assisted tenancy, the PHA must redetermine that the current rent to owner is a reasonable rent.

(3) The PHA must determine whether the rent to owner for the manufactured home space is a reasonable rent in comparison to rent for other comparable manufactured home spaces. To make this determination, the PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner in accordance with the lease (without a fee in addition to the rent).

(4) By accepting each monthly housing assistance payment from the PHA, the owner of the manufactured home space certifies that the rent to owner for the space is not more than rent charged by the owner for unassisted rental of comparable spaces in the same manufactured home park or elsewhere. The owner must give the PHA information, as requested by the PHA, on rents charged by the owner for other manufactured home spaces.

982.623 Manufactured home space rental: Housing assistance payment.

(a) There is a separate fair market rent for a manufactured home space. The FMR for a manufactured home space is determined in accordance with §888.113(e) of this title. The FMR for a manufactured home space is generally 40 percent of the published FMR for a two-bedroom unit.

(b) The payment standard shall be determined in accordance with §982.505.

(c) The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the lower of:

(1) The payment standard minus the total tenant payment; or

(2) The rent paid for rental of the real property on which the manufactured home owned by the family is located ("space rent") minus the total tenant payment.

(d) The space rent is the sum of the following as determined by the PHA:

(1) Rent to owner for the manufactured home space;

(2) Owner maintenance and management charges for the space;

(3) The utility allowance for tenant-paid utilities.

982.624 Manufactured home space rental: Utility allowance schedule.

The PHA must establish utility allowances for manufactured home space rental. For the first twelve months of the initial lease term only, the allowances must include a reasonable amount for utility hook-up charges payable by the family if the family actually incurs the expenses because of a move. Allowances for utility hook-up charges do not apply to a family that leases a manufactured home space in place. Utility allowances for manufactured home space must not cover costs payable by a family to cover the digging of a well or installation of a septic system.

Homeownership Option

982.625 Homeownership option: General.

(a) The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family.

(b) A family assisted under the homeownership option may be a newly admitted or existing participant in the program.

(c) *Forms of homeownership assistance.* (1) A PHA may provide one of two forms of homeownership assistance for a family:

(i) Monthly homeownership assistance payments; or

(ii) A single downpayment assistance grant.

(2) *Prohibition against combining forms of homeownership assistance.* A family may only receive one form of homeownership assistance. Accordingly, a family that includes a person who was an adult member of a family that previously received either of the two forms of homeownership assistance may not receive the other form of homeownership assistance from any PHA.

(d) *PHA choice to offer homeownership options.* (1) The PHA may choose to offer either or both forms of homeownership assistance under this subpart, or choose not to offer either form of assistance. However, the PHA must offer either form of homeownership assistance if necessary as a reasonable accommodation for a person with disabilities in accordance with §982.601(b)(3).

(2) It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

(e) *Family choice.* (1) The family chooses whether to participate in the homeownership option if offered by the PHA.

(2) If the PHA offers both forms of homeownership assistance, the family chooses which form of homeownership assistance to receive.

(f) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and useable by persons with disabilities in accordance with part 8 of this title. (See §982.316 concerning occupancy by a live-in aide.)

(g) The PHA must have the capacity to operate a successful Section 8 homeownership program. The PHA has the required capacity if it satisfies either paragraph (g)(1), (g)(2), or (g)(3) of this section.

(1) The PHA establishes a minimum homeowner downpayment requirement of at least 3 percent of the purchase price for participation in its Section 8 homeownership program, and requires that at least one percent of the purchase price come from the family's personal resources;

(2) The PHA requires that financing for purchase of a home under its Section 8 homeownership program:

(i) Be provided, insured, or guaranteed by the state or Federal government;

(ii) Comply with secondary mortgage market underwriting requirements; or

(iii) Comply with generally accepted private sector underwriting standards; or

(3) The PHA otherwise demonstrates in its Annual Plan that it has the capacity, or will acquire the capacity, to successfully operate a Section 8 homeownership program.

(h) *Recapture of homeownership assistance.* A PHA shall not impose or enforce any requirement for the recapture of voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option.

(i) *Applicable requirements.* The following specify what regulatory provisions (under the heading "homeownership option") are applicable to either or both forms of homeownership assistance (except as otherwise specifically provided):

(1) *Common provisions.* The following provisions apply to both forms of homeownership assistance:

(i) Section 982.625 (General);

(ii) Section 982.626 (Initial requirements);

(iii) Section 982.627 (Eligibility requirements for families);

(iv) Section 982.628 (Eligible units);

(v) Section 982.629 (Additional PHA requirements for family search and purchase);

(vi) Section 982.630 (Homeownership counseling);

(vii) Section 982.631 (Home inspections, contract of sale, and PHA disapproval of seller);

(viii) Section 982.632 (Financing purchase of home; affordability of purchase);

(ix) Section 982.636 (Portability);

(x) Section 982.638 (Denial or termination of assistance for family); and

(xi) Section 982.641 (Applicability of other requirements).

(2) *Monthly homeownership assistance payments.* The following provisions only apply to homeownership assistance in the form of monthly homeownership assistance payments:

(i) Section 982.633 (Continued assistance requirements; family obligations);

(ii) Section 982.634 (Maximum term of homeownership assistance);

(iii) Section 982.635 (Amount and distribution of monthly homeownership assistance payment);

(iv) Section 982.637 (Move with continued tenant-based assistance); and

(v) Section 982.639 (Administrative fees).

(3) *Downpayment assistance grant.* The following provision only applies to homeownership assistance in the form of a downpayment assistance grant: Section 982.643 (Downpayment assistance grants).

982.626 Homeownership option: Initial requirements.

(a) *List of initial requirements.* Before commencing homeownership assistance for a family, the PHA must determine that all of the following initial requirements have been satisfied:

(1) The family is qualified to receive homeownership assistance (see 982.627);

(2) The unit is eligible (see 982.628); and

(3) The family has satisfactorily completed the PHA program of required pre-assistance homeownership counseling (see 982.630).

(b) *Additional PHA requirements.* Unless otherwise provided in this part, the PHA may limit homeownership assistance to families or purposes defined by the PHA, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the PHA administrative plan.

(c) *Environmental requirements.* The PHA is responsible for complying with the authorities listed in §58.6 of this title requiring the purchaser to obtain and maintain flood insurance for units in special flood hazard areas, prohibiting assistance for acquiring units in the coastal barrier resources system, and requiring notification to the purchaser of units in airport runway clear zones and airfield clear zones. In the case of units not yet under construction at the time the family enters into the contract for sale, the additional environmental review requirements referenced in §982.628(e) of this part also apply, and the PHA shall submit all relevant environmental information to the responsible entity or to HUD to assist in completion of those requirements.

982.627 Homeownership option: Eligibility requirements for families.

(a) *Determination whether family is qualified.* The PHA may not provide homeownership assistance for a family unless the PHA determines that the family satisfies all of the following initial requirements at commencement of homeownership assistance for the family:

(1) The family has been admitted to the Section 8 Housing Choice Voucher program, in accordance with subpart E of this part.

(2) The family satisfies any first-time homeowner requirements (described in paragraph (b) of this section).

(3) The family satisfies the minimum income requirement (described in paragraph (c) of this section).

(4) The family satisfies the employment requirements (described in paragraph (d) of this section).

(5) The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option (see paragraph (e) of this section).

(6) Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.

(7) Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with §982.631(c).

(8) The family also satisfies any other initial requirements established by the PHA (see §982.626(b)). Any such additional requirements must be described in the PHA administrative plan.

(b) *First-time homeowner requirements.* At commencement of homeownership assistance for the family, the family must be any of the following:

(1) A first-time homeowner (defined at §982.4);

(2) A cooperative member (defined at §982.4); or

(3) A family of which a family member is a person with disabilities, and use of the homeownership option is needed as a reasonable accommodation so that the program is readily accessible to and usable by such person, in accordance with part 8 of this title.

(c) *Minimum income requirements.* (1) At commencement of monthly homeownership assistance payments for the family, or at the time of a downpayment assistance grant for the family, the family must demonstrate that the annual income, as determined by the PHA in accordance with §5.609 of this title, of the adult family members who will own the home at commencement of homeownership assistance is not less than:

(i) In the case of a disabled family (as defined in §5.403(b) of this title), the monthly Federal Supplemental Security Income (SSI) benefit for an individual living alone (or paying his or her share of food and housing costs) multiplied by twelve; or

(ii) In the case of other families, the Federal minimum wage multiplied by 2,000 hours.

(2)(i) Except in the case of an elderly family or a disabled family (see the definitions of these terms at §5.403(b) of this title), the PHA shall not count any welfare assistance received by the family in determining annual income under this section.

(ii) The disregard of welfare assistance income under paragraph (c)(2)(i) of this section only affects the determination of minimum annual income used to determine if a family initially qualifies for commencement of homeownership assistance in accordance with this section, but does not affect:

(A) The determination of income-eligibility for admission to the voucher program;

(B) Calculation of the amount of the family's total tenant payment (gross family contribution); or

(C) Calculation of the amount of homeownership assistance payments on behalf of the family.

(iii) In the case of an elderly or disabled family, the PHA shall include welfare assistance for the adult family members who will own the home in determining if the family meets the minimum income requirement.

(3) A PHA may establish a minimum income standard that is higher than those described in paragraph (c)(1) of this section for either or both types of families. However, a family that meets the applicable HUD minimum income requirement described in paragraph (c)(1) of this section, but not the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if:

(i) The family demonstrates that it has been pre-qualified or pre-approved for financing;

(ii) The pre-qualified or pre-approved financing meets any PHA established requirements under §982.632 for financing the purchase of the home (including qualifications of lenders and terms of financing); and

(iii) The pre-qualified or pre-approved financing amount is sufficient to purchase housing that meets HQS in the PHA's jurisdiction.

(d) *Employment requirements.* (1) Except as provided in paragraph (d)(2) of this section, the family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership assistance:

(i) Is currently employed on a full-time basis (the term "full-time employment" means not less than an average of 30 hours per week); and

(ii) Has been continuously so employed during the year before commencement of homeownership assistance for the family.

(2) The PHA shall have discretion to determine whether and to what extent interruptions are considered to break continuity of employment during the year. The PHA may count successive employment during the year. The PHA may count self-employment in a business.

(3) The employment requirement does not apply to an elderly family or a disabled family (see the definitions of these terms at §5.403(b) of this title). Furthermore, if a family, other than an elderly family or a disabled family, includes a person with disabilities, the PHA shall grant an exemption from the employment requirement if the PHA determines that an exemption is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with part 8 of this title.

(4) A PHA may not establish an employment requirement in addition to the employment standard established by this paragraph.

(e) *Prohibition against assistance to family that has defaulted.* The PHA shall not commence homeownership assistance for a family that includes an individual who was an adult member of a family at the time when such family received homeownership assistance and defaulted on a mortgage securing debt incurred to purchase the home.

982.628 Homeownership option: Eligible units.

(a) *Initial requirements applicable to the unit.* The PHA must determine that the unit satisfies all of the following requirements:

(1) The unit is eligible. (See 982.352. Paragraphs (a)(6), (a)(7) and (b) of 982.352 do not apply.)

(2) The unit is either a one-unit property (including a manufactured home) or a single dwelling unit in a cooperative or condominium.

(3) The unit has been inspected by a PHA inspector and by an independent inspector designated by the family (see 982.631).

(4) The unit satisfies the HQS (see 982.401 and 982.631).

(b) *Purchase of home where family will not own fee title to the real property.* Homeownership assistance may be provided for the purchase of a home where the family will not own fee title to the real property on which the home is located, but only if:

(1) The home is located on a permanent foundation; and

(2) The family has the right to occupy the home site for at least forty years.

(c) *PHA disapproval of seller.* The PHA may not commence homeownership assistance for occupancy of a home if the PHA has been informed (by HUD or otherwise) that the seller of the home is debarred, suspended, or subject to a limited denial of participation under 2 CFR part 2424.

(d) *PHA-owned units.* Homeownership assistance may be provided for the purchase of a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA), only if all of the following conditions are satisfied:

(1) The PHA must inform the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;

(2) The unit is not ineligible housing;

(3) The PHA must obtain the services of an independent agency, in accordance with 982.352(b)(1)(iv)(B) and (C), to perform the following PHA functions:

(i) Inspection of the unit for compliance with the HQS, in accordance with 982.631(a);

(ii) Review of the independent inspection report, in accordance with 982.631(b)(4);

(iii) Review of the contract of sale, in accordance with 982.631(c); and

(iv) Determination of the reasonableness of the sales price and any PHA provided financing, in accordance with 982.632 and other supplementary guidance established by HUD.

(e) Units not yet under construction. Families may enter into contracts of sale for units not yet under construction at the time the family enters into the contract for sale. However, the PHA shall not commence homeownership assistance for the family for that unit, unless and until:

(1) Either:

(i) The responsible entity completed the environmental review procedures required by 24 CFR part 58, and HUD approved the environmental certification and request for release of funds prior to commencement of construction; or

(ii) HUD performed an environmental review under 24 CFR part 50 and notified the PHA in writing of environmental approval of the site prior to commencement of construction;

(2) Construction of the unit has been completed; and

(3) The unit has passed the required Housing Quality Standards (HQS) inspection (see §982.631(a)) and independent inspection (see §982.631(b)).

982.629 Homeownership option: Additional PHA requirements for family search and purchase.

(a) The PHA may establish the maximum time for a family to locate a home, and to purchase the home.

(b) The PHA may require periodic family reports on the family's progress in finding and purchasing a home.

(c) If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

982.630 Homeownership option: Homeownership counseling.

(a) Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA (pre-assistance counseling).

(b) Suggested topics for the PHA-required pre-assistance counseling program include:

(1) Home maintenance (including care of the grounds);

(2) Budgeting and money management;

(3) Credit counseling;

(4) How to negotiate the purchase price of a home;

(5) How to obtain homeownership financing and loan preapprovals, including a description of types of financing that may be available, and the pros and cons of different types of financing;

(6) How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;

(7) Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;

(8) Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and

(9) Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

(c) The PHA may adapt the subjects covered in pre-assistance counseling (as listed in paragraph (b) of this section) to local circumstances and the needs of individual families.

(d) The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

(e) If the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

982.631 Homeownership option: Home inspections, contract of sale and PHA disapproval of seller.

(a) *HQS inspection by PHA.* The PHA may not commence monthly homeownership assistance payments or provide a downpayment assistance grant for the family until the PHA has inspected the unit and has determined that the unit passes HQS.

(b) *Independent inspection.* (1) The unit must also be inspected by an independent professional inspector selected by and paid by the family.

(2) The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

(3) The PHA may not require the family to use an independent inspector selected by the PHA. The independent inspector may not be a PHA employee or contractor, or other person under control of the PHA. However, the PHA may establish standards for qualification of inspectors selected by families under the homeownership option.

(4) The independent inspector must provide a copy of the inspection report both to the family and to the PHA. The PHA may not commence monthly homeownership assistance payments, or provide a downpayment assistance grant for the family, until the PHA has reviewed the inspection report of the independent inspector. Even if the unit otherwise complies with the HQS (and may qualify for assistance under the PHA's tenant-based rental voucher program), the PHA shall have discretion to disapprove the unit for assistance under the homeownership option because of information in the inspection report.

(c) *Contract of sale.* (1) Before commencement of monthly homeownership assistance payments or receipt of a downpayment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale (see also §982.627(a)(7)).

(2) The contract of sale must:

(i) Specify the price and other terms of sale by the seller to the purchaser.

(ii) Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser.

(iii) Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser.

(iv) Provide that the purchaser is not obligated to pay for any necessary repairs.

(3) In addition to the requirements contained in paragraph (c)(2) of this section, a contract for the sale of units not yet under construction at the time the family is to enter into the contract for sale must also provide that:

(i) The purchaser is not obligated to purchase the unit unless an environmental review has been performed and the site has received environmental approval prior to commencement of construction in accordance with 24 CFR 982.628.

(ii) The construction will not commence until the environmental review has been completed and the seller has received written notice from the PHA that environmental approval has been obtained. Conduct of the environmental review may not necessarily result in environmental approval, and environmental approval may be conditioned on the contracting parties' agreement to modifications to the unit design or to mitigation actions.

(iii) Commencement of construction in violation of paragraph (c)(3)(ii) of this section voids the purchase contract and renders homeownership assistance under 24 CFR part 982 unavailable for purchase of the unit.

(d) *PHA disapproval of seller.* In its administrative discretion, the PHA may deny approval of a seller for any reason provided for disapproval of an owner in §982.306(c).

982.632 Homeownership option: Financing purchase of home; affordability of purchase.

(a) The PHA may establish requirements for financing purchase of a home to be assisted under the homeownership option. Such PHA requirements may include requirements concerning qualification of lenders (for example, prohibition of seller financing or case-by-case approval of seller financing), or concerning terms of financing (for example, a prohibition of balloon payment mortgages, establishment of a minimum homeowner equity requirement from personal resources, or provisions required to protect borrowers against high cost loans or predatory loans). A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

(b) If the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

(c) The PHA may establish requirements or other restrictions concerning debt secured by the home.

(d) The PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or other debt if the PHA determines that the debt is unaffordable, or if the PHA determines that the lender or the loan terms do not meet PHA qualifications. In making this determination, the PHA may take into account other family expenses, such as child care, unreimbursed medical expenses, homeownership expenses, and other family expenses as determined by the PHA.

(e) All PHA financing or affordability requirements must be described in the PHA administrative plan.

982.633 Homeownership option: Continued assistance requirements; Family obligations.

(a) *Occupancy of home.* Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

(b) *Family obligations.* The family must comply with the following obligations.

(1) *Ongoing counseling*. To the extent required by the PHA, the family must attend and complete ongoing homeownership and housing counseling.

(2) *Compliance with mortgage*. The family must comply with the terms of any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

(3) *Prohibition against conveyance or transfer of home.*

(i) So long as the family is receiving homeownership assistance, use and occupancy of the home is subject to 982.551(h) and (i).

(ii) The family may grant a mortgage on the home for debt incurred to finance purchase of the home or any refinancing of such debt.

(iii) Upon death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home, homeownership assistance may continue pending settlement of the decedent's estate, notwithstanding transfer of title by operation of law to the decedent's executor or legal representative, so long as the home is solely occupied by remaining family members in accordance with 982.551(h).

(4) *Supplying required information*.

(i) The family must supply required information to the PHA in accordance with 982.551(b).

(ii) In addition to other required information, the family must supply any information as required by the PHA or HUD concerning:

(A) Any mortgage or other debt incurred to purchase the home, and any refinancing of such debt (including information needed to determine whether the family has defaulted on the debt, and the nature of any such default), and information on any satisfaction or payment of the mortgage debt;

(B) Any sale or other transfer of any interest in the home; or

(C) The family's homeownership expenses.

(5) *Notice of move-out.* The family must notify the PHA before the family moves out of the home.

(6) *Notice of mortgage default*. The family must notify the PHA if the family defaults on a mortgage securing any debt incurred to purchase the home.

(7) *Prohibition on ownership interest on second residence*. During the time the family receives homeownership assistance under this subpart, no family member may have any ownership interest in any other residential property.

(8) *Additional PHA requirements*. The PHA may establish additional requirements for continuation of homeownership assistance for the family (for example, a requirement for post-purchase homeownership counseling or for periodic unit inspections while the family is receiving homeownership assistance). The family must comply with any such requirements.

(9) *Other family obligations.* The family must comply with the obligations of a participant family described in 982.551. However, the following provisions do not apply to assistance under the homeownership option: 982.551(c), (d), (e), (f), (g) and (j).

(c) *Statement of homeowner obligations.* Before commencement of homeownership assistance, the family must execute a statement of family obligations in the form prescribed by HUD. In the statement, the family agrees to comply with all family obligations under the homeownership option.

982.634 Homeownership option: Maximum term of homeownership assistance.

(a) *Maximum term of assistance.* Except in the case of a family that qualifies as an elderly or disabled family (see paragraph (c) of this section), the family members described in paragraph (b) of this section shall not receive homeownership assistance for more than:

(1) Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or

(2) Ten years, in all other cases.

(b) *Applicability of maximum term.* The maximum term described in paragraph (a) of this section applies to any member of the family who:

(1) Has an ownership interest in the unit during the time that homeownership payments are made; or

(2) Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

(c) *Exception for elderly and disabled families*. (1) As noted in paragraph (a) of this section, the maximum term of assistance does not apply to elderly and disabled families.

(2) In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

(3) If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part).

(d) *Assistance for different homes or PHAs.* If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in paragraph (a) of this section.

982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.

(a) *Amount of monthly homeownership assistance payment.* While the family is residing in the home, the PHA shall pay a monthly homeownership assistance payment on behalf of the family that is equal to the lower of:

(1) The payment standard minus the total tenant payment; or

(2) The family's monthly homeownership expenses minus the total tenant payment.

(b) *Payment standard for family.* (1) The payment standard for a family is the lower of:

(i) The payment standard for the family unit size; or

(ii) The payment standard for the size of the home.

(2) If the home is located in an exception payment standard area, the PHA must use the appropriate payment standard for the exception payment standard area.

(3) The payment standard for a family is the greater of:

(i) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the commencement of homeownership assistance for occupancy of the home; or

(ii) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

(4) The PHA must use the same payment standard schedule, payment standard amounts, and subsidy standards pursuant to 982.402 and 982.503 for the homeownership option as for the rental voucher program.

(c) *Determination of homeownership expenses*. (1) The PHA shall adopt policies for determining the amount of homeownership expenses to be allowed by the PHA in accordance with HUD requirements.

(2) Homeownership expenses for a homeowner (other than a cooperative member) may only include amounts allowed by the PHA to cover:

(i) Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;

(ii) Real estate taxes and public assessments on the home;

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

(v) The PHA allowance for costs of major repairs and replacements;

(vi) The PHA utility allowance for the home;

(vii) Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person, in accordance with part 8 of this title; and

(viii) Land lease payments (where a family does not own fee title to the real property on which the home is located; see § 982.628(b)).

(3) Homeownership expenses for a cooperative member may only include amounts allowed by the PHA to cover:

(i) The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;

(ii) Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

(v) The PHA allowance for costs of major repairs and replacements;

(vi) The PHA utility allowance for the home; and

(vii) Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person, in accordance with part 8 of this title.

(4) If the home is a cooperative or condominium unit, homeownership expenses may also include cooperative or condominium operating charges or maintenance fees assessed by the condominium or cooperative homeowner association.

(d) *Payment to lender or family.* The PHA must pay homeownership assistance payments either:

(1) Directly to the family or;

(2) At the discretion of the PHA, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

(e) *Automatic termination of homeownership assistance.* Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a PHA has the discretion to grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

982.636 Homeownership option: Portability.

(a) *General.* A family may qualify to move outside the initial PHA jurisdiction with continued homeownership assistance under the voucher program in accordance with this section.

(b) *Portability of homeownership assistance.* Subject to §982.353(b) and (c), §982.552, and §982.553, a family determined eligible for homeownership assistance by the initial PHA may purchase a unit outside of the initial PHA's jurisdiction, if the receiving PHA is administering a voucher homeownership program and is accepting new homeownership families.

(c) *Applicability of Housing Choice Voucher program portability procedures.* In general, the portability procedures described in §§982.353 and 982.355 apply to the homeownership option and the administrative responsibilities of the initial and receiving PHA are not altered except that some administrative functions (e.g., issuance of a voucher or execution of a tenancy addendum) do not apply to the homeownership option.

(d) *Family and PHA responsibilities.* The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

(e) *Continued assistance under §982.637.* Such continued assistance under portability procedures is subject to §982.637.

982.637 Homeownership option: Move with continued tenant-based assistance.

(a) *Move to new unit*. (1) A family receiving homeownership assistance may move to a new unit with continued tenant-based assistance in accordance with this section. The family may move either with voucher rental assistance (in accordance with rental assistance program requirements) or with voucher homeownership assistance (in accordance with homeownership option program requirements).

(2) The PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home. However, when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if such family or family member owns any title or other interest in the prior home.

(3) The PHA may establish policies that prohibit more than one move by the family during any one-year period. However, these policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar- day period preceding the family's request to move.

(b) *Requirements for continuation of homeownership assistance.* The PHA must determine that all initial requirements listed in §982.626 (including the environmental requirements with respect to a unit not yet under construction) have been satisfied if a family that has received homeownership assistance wants to move to such a unit with continued homeownership assistance. However, the following requirements do not apply:

(1) The requirement for pre-assistance counseling (982.630) is not applicable. However, the PHA may require that the family complete additional counseling (before or after moving to a new unit with continued assistance under the homeownership option).

(2) The requirement that a family must be a first-time homeowner (982.627) is not applicable.

(c) *When PHA may deny permission to move with continued assistance.* The PHA may deny permission to move to a new unit with continued voucher assistance as follows:

(1) *Lack of funding to provide continued assistance.* The PHA may deny permission to move with continued rental or homeownership assistance if the PHA determines that it does not have sufficient funding to provide continued assistance. The PHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves based on insufficient funding.

(2) Termination or denial of assistance under 982.638. At any time, the PHA may deny permission to move with continued rental or homeownership assistance in accordance with 982.638.

982.638 Homeownership option: Denial or termination of assistance for family.

(a) *General.* The PHA shall terminate homeownership assistance for the family, and shall deny voucher rental assistance for the family, in accordance with this section.

(b) *Denial or termination of assistance under basic voucher program.* At any time, the PHA may deny or terminate homeownership assistance in accordance with982.552 (Grounds for denial or termination of assistance) or 982.553 (Crime by family members).

(c) *Failure to comply with family obligations.* The PHA may deny or terminate assistance for violation of participant obligations described in 982.551 or 982.633.

(d) *Mortgage default.* The PHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA-insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt. The PHA, in its discretion, may permit the family to move to a new unit with continued voucher rental assistance. However, the PHA must deny such permission, if:

(1) The family defaulted on an FHA-insured mortgage; and

(2) The family fails to demonstrate that:

(i) The family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and (ii) The family has moved, or will move, from the home within the period established or approved by HUD.

982.639 Homeownership option: Administrative fees.

The ongoing administrative fee described in 982.152(b) is paid to the PHA for each month that homeownership assistance is paid by the PHA on behalf of the family.

982.641 Homeownership option: Applicability of other requirements.

(a) *General.* The following types of provisions (located in other subparts of this part) do not apply to assistance under the homeownership option:

(1) Any provisions concerning the Section 8 owner or the HAP contract between the PHA and owner;

(2) Any provisions concerning the assisted tenancy or the lease between the family and the owner;

(3) Any provisions concerning PHA approval of the assisted tenancy;

(4) Any provisions concerning rent to owner or reasonable rent; and

(5) Any provisions concerning the issuance or term of voucher.

(b) *Subpart G requirements.* The following provisions of subpart G of this part do not apply to assistance under the homeownership option:

(1) Section 982.302 (Issuance of voucher; Requesting PHA approval of assisted tenancy);

(2) Section 982.303 (Term of voucher);

(3) Section 982.305 (PHA approval of assisted tenancy);

(4) Section 982.306 (PHA disapproval of owner) (except that a PHA may disapprove a seller for any reason described in paragraph (c), see §982.631(d)).

(5) Section 982.307 (Tenant screening);

(6) Section 982.308 (Lease and tenancy);

(7) Section 982.309 (Term of assisted tenancy);

(8) Section 982.310 (Owner termination of tenancy);

(9) Section 982.311 (When assistance is paid) (except that §982.311(c)(3) is applicable to assistance under the homeownership option);

(10) Section 982.313 (Security deposit: Amounts owed by tenant); and

(11) Section 982.354 (Move with continued tenant-based assistance).

(c) *Subpart H requirements.* The following provisions of subpart H of this part do not apply to assistance under the homeownership option:

(1) Section 982.352(a)(6) (Prohibition of owner-occupied assisted unit);

(2) Section 982.352(b) (PHA-owned housing); and

(3) Those provisions of §982.353 (Where family can lease a unit with tenant-based assistance) and §982.355 (Portability: Administration by receiving PHA) that are inapplicable per §982.636;

(d) *Subpart I requirements.* The following provisions of subpart I of this part do not apply to assistance under the homeownership option:

(1) Section 982.403 (Terminating HAP contract when unit is too small);

(2) Section 982.404 (Maintenance: Owner and family responsibility; PHA remedies); and

(3) Section 982.405 (PHA initial and periodic unit inspection).

(e) *Subpart J requirements.* The requirements of subpart J of this part (Housing Assistance Payments Contract and Owner Responsibility) (§§982.451-456) do not apply to assistance under the homeownership option.

(f) *Subpart K requirements.* Except for those sections listed below, the requirements of subpart K of this part (Rent and Housing Assistance Payment) (§§982.501-521) do not apply to assistance under the homeownership option:

(1) Section 982.503 (Voucher tenancy: Payment standard amount and schedule);

(2) Section 982.516 (Family income and composition: Regular and interim reexaminations); and

(3) Section 982.517 (Utility allowance schedule).

(g) *Subpart L requirements.* The following provisions of subpart L of this part do not apply to assistance under the homeownership option:

(1) Section 982.551(c) (HQS breach caused by family);

(2) Section 982.551(d) (Allowing PHA inspection);

(3) Section 982.551(e) (Violation of lease);

(4) Section 982.551(g) (Owner eviction notice); and

(5) Section 982.551(j) (Interest in unit).

(h) *Subpart M requirements.* The following provisions of subpart M of this part do not apply to assistance under the homeownership option:

(1) Sections 982.602-982.619; and

(2) Sections 982.622-982.624.

982.642 Homeownership option: Pilot program for homeownership assistance for disabled families.

(a) *General.* This section implements the pilot program authorized by section 302 of the American Homeownership and Economic Opportunity Act of 2000. Under the pilot program, a PHA may provide homeownership assistance to a disabled family residing in a home purchased and owned by one or more members of the family. A PHA that administers tenant-based assistance has the choice whether to offer homeownership assistance under the pilot program (whether or not the PHA has also decided to offer the homeownership option).

(b) *Applicability of homeownership option requirements.* Except as provided in this section, all of the regulations applicable to the homeownership option (as described in 982.625 through 982.641) are also applicable to the pilot program.

(c) *Initial eligibility requirements.* Before commencing homeownership assistance under the pilot program for a family, the PHA must determine that all of the following initial requirements have been satisfied:

(1) The family is a disabled family (as defined in 5.403 of this title);

(2) The family annual income does not exceed 99 percent of the median income for the area;

(3) The family is not a current homeowner;

(4) The family must close on the purchase of the home during the period starting on July 23, 2001 and ending on July 23, 2004; and

(5) The family meets the initial requirements described in 982.626; however, the following initial requirements do not apply to a family seeking to participate in the pilot program:

(i) The income eligibility requirements of 982.201(b)(1);

(ii) The first-time homeowner requirements of 982.627(b); and

(iii) The mortgage default requirements of 982.627(e), if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency.

(d) *Amount and distribution of homeownership assistance payments.* (1) While the family is residing in the home, the PHA shall calculate a monthly homeownership assistance payment on behalf of the family in accordance with 982.635 and this section.

(2) A family that is a low income family (as defined at 24 CFR 5.603(b)) as determined by HUD shall receive the full amount of the monthly homeownership assistance payment calculated under 982.635.

(3) A family whose annual income is greater than the low income family ceiling but does not exceed 89 percent of the median income for the area as determined by HUD shall receive a monthly homeownership assistance payment equal to 66 percent of the amount calculated under 982.635. (4) A family whose annual income is greater than the 89 percent ceiling but does not exceed 99 percent of the median income for the area as determined by HUD shall receive a monthly homeownership assistance payment equal to 33 percent of the amount calculated under 982.635. (5) A family whose annual income is greater than 99 percent of the median income for the area shall not receive homeownership assistance under the pilot program.

(e) *Assistance payments to lender.* The PHA must make homeownership assistance payments to a lender on behalf of the disabled family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family. The provisions of 982.635(d), which permit the PHA to make monthly homeownership assistance payments directly to the family, do not apply to the pilot program.

(f) *Mortgage defaults.* The requirements of 982.638(d) regarding mortgage defaults are applicable to the pilot program. However, notwithstanding 982.638(d), the PHA may, in its discretion, permit a family that has defaulted on its mortgage to move to a new unit with continued voucher homeownership assistance if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency. The requirements of 982.627(a)(5) and 982.627(e) do not apply to such a family.

982.643 Homeownership option: Downpayment assistance grants.

(a) *General.* (1) A PHA may provide a single downpayment assistance grant for a participant that has received tenant-based or project-based rental assistance in the Housing Choice Voucher Program.

(2) The downpayment assistance grant must be applied toward the downpayment required in connection with the purchase of the home and/or reasonable and customary closing costs in connection with the purchase of the home.

(3) If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see § 982.632(b) of this part regarding the applicability of FHA requirements to voucher homeownership assistance and § 203.27 of this title regarding allowable fees, charges and discounts for FHA-insured mortgages).

(b) *Maximum downpayment grant.* A downpayment assistance grant may not exceed twelve times the difference between the payment standard and the total tenant payment.

(c) *Payment of downpayment grant.* The downpayment assistance grant shall be paid at the closing of the family's purchase of the home.

(d) *Administrative fee.* For each downpayment assistance grant made by the PHA, HUD will pay the PHA a one-time administrative fee in accordance with § 982.152(a)(1)(iii).

(e) *Return to tenant-based assistance.* A family that has received a downpayment assistance grant may apply for and receive tenant-based rental assistance, in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental assistance for occupancy of the new unit so long as any member of the family owns any title or other interest in the home purchased with homeownership assistance. Further, eighteen months must have passed since the family's receipt of the downpayment assistance grant.

(f) *Implementation of downpayment assistance grants.* A PHA may not offer downpayment assistance under this paragraph until HUD publishes a notice in the *Federal Register.*

PART 985 SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

Subpart A General

985.1 Purpose and applicability.

(a) *Purpose.* The Section 8 Management Assessment Program (SEMAP) is designed to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost. SEMAP also establishes a system for HUD to measure PHA performance in key Section 8 program areas and to assign performance ratings. SEMAP provides procedures for HUD to identify PHA management capabilities and deficiencies in order to target monitoring and program assistance more effectively. PHAs can use the SEMAP performance analysis to assess and improve their own program operations.

(b) *Applicability.* This rule applies to PHA administration of the tenant-based Section 8 rental voucher and rental certificate programs (24 CFR part 982), the project-based component (PBC) of the certificate program (24 CFR part 983) to the extent that PBC family and unit data are reported and measured under the stated HUD verification method, and enrollment levels and contributions to escrow accounts for Section 8 participants under the family self-sufficiency program (FSS) (24 CFR part 984).

985.2 Definitions.

(a) The terms *Department, Fair Market Rent, HUD, Secretary, and Section 8,* as used in this part, are defined in 24 CFR 5.100.

(b) The definitions in 24 CFR 982.4 apply to this part. As used in this part:

Confirmatory review means an on site review performed by HUD to verify the management performance of a PHA.

Corrective action plan means a HUD-required written plan that addresses PHA program management deficiencies or findings identified by HUD through remote monitoring or on-site review, and that will bring the PHA to an acceptable level of performance.

MTCS means Multifamily Tenant Characteristics System. MTCS is the Department's national database on participants and rental units in the Section 8 rental certificate, rental voucher, and moderate rehabilitation programs and in the Public and Indian Housing programs.

Performance indicator means a standard set for a key area of Section 8 program management against which the PHA's performance is measured to show whether the PHA administers the program properly and effectively. (See 985.3.)

PHA means a Housing Agency.

*PHA's quality control sampl*e means an annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. The minimum size of the PHA's quality control sample is as follows:

Universe	Minimum number of files or records to be sampled
50 or less	5
51-600	5 plus 1 for each 50 (or part of 50) over 50
601-2000	16 plus 1 for each 100 (or part of 100) over 600
Over 2000	30 plus 1 for each 200 (or part of 200) over 2000

Where the universe is: the number of admissions in the last year for each of the two quality control samples under the SEMAP indicator at 985.3(a) Selection from the Waiting List; the number of families assisted for the SEMAP indicators at 985.3(b) Reasonable Rent, and 985.3(c) Determination of Adjusted Income; the number of units under

HAP contract during the last completed PHA fiscal year for the SEMAP indicator at 985.3(e) HQS Quality Control Inspections; and the number of failed HQS inspections in the last year for the SEMAP indicator at 985.3(f) HQS Enforcement.

SEMAP certification means the PHA's annual certification to HUD, on the form prescribed by HUD, concerning its performance in key Section 8 program areas.

SEMAP deficiency means any rating of 0 points on a SEMAP performance indicator.

SEMAP profile means a summary prepared by HUD of a PHA's ratings on each SEMAP indicator, its overall SEMAP score, and its overall performance rating (high performer, standard, troubled).

985.3 Indicators, HUD verification methods and ratings.

This section states the performance indicators that are used to assess PHA Section 8 management. HUD will use the verification method identified for each indicator in reviewing the accuracy of a PHA's annual SEMAP certification. HUD will prepare a SEMAP profile for each PHA and will assign a rating for each indicator as shown. If the HUD verification method for the indicator relies on data in MTCS and HUD determines those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator. The method for selecting the PHA's quality control sample under paragraphs (a), (b), (c) and (f) of this section must leave a clear audit trail that can be used to verify that the PHA's quality control sample was drawn in an unbiased manner.

A PHA that expends less than $300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor (IA), will not be rated under the SEMAP indicators in paragraphs (a) through (g) of this section for which the annual IA audit report is a HUD verification method. For those PHAs, the SEMAP score and overall performance rating will be determined based only on the remaining indicators in paragraphs (i) through (o) of this section as applicable. Although the SEMAP performance rating will not be determined using the indicators in paragraphs (a) through (g) of this section, PHAs not subject to Federal audit requirements must still complete the SEMAP certification for these indicators and performance under the indicators is subject to HUD confirmatory reviews.

(a) *Selection from the Waiting List*. (1) This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list. (24 CFR 982.54(d)(1) and 982.204(a))

(2) *HUD verification method:* The independent auditor (IA) annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) *Rating*: (i) The PHA's SEMAP certification states that:

(A) The PHA has written waiting list selection policies in its administrative plan and,

(B) Based on the PHA's quality control samples, drawn separately for applicants reaching the top of the waiting list and for admissions, documentation shows that at least 98 percent of the families in both samples of applicants and admissions were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of selection. 15 points.

(ii) The PHA's SEMAP certification does not support the statement in paragraph (a)(3)(i) of this section. 0 points.

(b) *Reasonable Rent*. (1) This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units: At the time of initial leasing; if there is any increase in the rent to owner; at the HAP contract anniversary if there is a 10 percent decrease in the published fair market rent (FMR) in effect 60 days before the HAP contract anniversary. The PHA's method must take into consideration the location, size, type, quality and age of the units, and the amenities, housing services, and maintenance and utilities provided by the owners in determining comparability and the reasonable rent. (24 CFR 982.4, 24 CFR 982.54(d)(15), 982.158(f)(7) and 982.507)

(2) *HUD verification method:* The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) *Rating*: (i) The PHA's SEMAP certification states that:

(A) The PHA has a reasonable written method to determine reasonable rent which considers location, size, type, quality and age of the units and the amenities, housing services, and maintenance and utilities provided by the owners; and

(B) Based on the PHA's quality control sample of tenant files, the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with §982.507 of this chapter for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 10 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

(ii) The PHA's SEMAP certification includes the statements in paragraph (b)(3)(i) of this section, except that the PHA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 10 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

(iii) The PHA's SEMAP certification does not support the statements in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. 0 points.

(c) *Determination of adjusted income*. (1) This indicator shows whether, at the time of admission and annual reexamination, the PHA verifies and correctly determines adjusted annual income for each assisted family and, where the family is responsible for utilities under the lease, the PHA uses the appropriate utility allowances for the unit leased in determining the gross rent. (24 CFR part 5, subpart F and 24 CFR 982.516)

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The PHA's SEMAP certification states that, based on the PHA's quality control sample of tenant files, for at least 90 percent of families:

(A) The PHA obtains third party verification of reported family annual income, the value of assets totaling more than $5,000, expenses related to deductions from annual income, and other factors that affect the determination of adjusted income, and uses the verified information in determining adjusted income, and/or documents tenant files to show why third party verification was not available;

(B) The PHA properly attributes and calculates allowances for any medical, child care, and/or disability assistance expenses; and

(C) The PHA uses the appropriate utility allowances to determine gross rent for the unit leased. 20 points.

(ii) The PHA's SEMAP certification includes the statements in paragraph (c)(3)(i) of this section, except that the PHA obtains and uses independent verification of income, properly attributes allowances, and uses the appropriate utility allowances for only 80 to 89 percent of families. 15 points.

(iii) The PHA's SEMAP certification does not support the statements in either paragraph (c)(3)(i) or (c)(3)(ii) of this section. 0 points.

(d) *Utility Allowance Schedule*. (1) This indicator shows whether the PHA maintains an up-to-date utility allowance schedule. (24 CFR 982.517)

(2) *HUD verification method:* The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) *Rating:* (i) The PHA's SEMAP certification states that the PHA reviewed utility rate data within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised. 5 points.

(ii) The PHA's SEMAP certification does not support the statement in paragraph (d)(3)(i) of this section. 0 points.

(e) *HQS quality control inspections*. (1) This indicator shows whether a PHA supervisor or other qualified person reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements specified at 985.2 under PHA's quality control sample, for quality control of HQS inspections. The PHA supervisor's reinspected sample is to be drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding reinspection) and is to be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. (24 CFR 982.405(b))

(2) *HUD verification method:* The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) *Rating:* (i) The PHA's SEMAP certification states that a PHA supervisor or other qualified person performed quality control HQS reinspections during the PHA fiscal year for a sample of units under contract which meets the minimum sample size requirements specified in 983.2 under PHA's quality control sample. The PHA's SEMAP certification also states that the reinspected sample was drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding the quality control reinspection) and was drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. 5 points.

(ii) The PHA's SEMAP certification does not support the statements in paragraph (e)(3)(i) of this section. 0 points.

(f) *HQS enforcement*. (1) This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening HQS deficiencies are corrected within 24 hours from the inspection and all other cited HQS deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension. In addition, if HQS deficiencies are not corrected timely, the indicator shows whether the PHA stops (abates) housing assistance payments beginning no later than the first of the month following the specified correction period or terminates the HAP contract or, for family-caused defects, takes prompt and vigorous action to enforce the family obligations. (24 CFR 982.404)

(2) *HUD verification method:* The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) *Rating:* (i) The PHA's SEMAP certification states that the PHA's quality control sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, for at least 98 percent of cases sampled, all other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any PHA-approved extension, or, if any life-threatening HQS deficiencies were not corrected within 24 hours and all other HQS deficiencies were not corrected within 30 calendar days or any PHA-approved extension, the PHA stopped (abated) housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce family obligations. 10 points.

(ii) The PHA's SEMAP certification does not support the statement in paragraph (f)(3)(i) of this section. 0 points.

(g) *Expanding housing opportunities*. (1) This indicator applies only to PHAs with jurisdiction in metropolitan FMR areas. The indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs rental voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration. (24 CFR 982.54(d)(5), 982.301(a) and 982.301(b)(4) and 982.301(b)(12))

(2) *HUD verification method:* The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) *Rating:* (i) The PHA's SEMAP certification states that:

(A) The PHA has a written policy in its administrative plan which includes actions the PHA will take to encourage participation by owners of units located outside areas of poverty or minority concentration, and which clearly delineates areas in its jurisdiction that the PHA considers areas of poverty or minority concentration;

(B) PHA documentation shows that the PHA has taken actions indicated in its written policy to encourage participation by owners of units located outside areas of poverty or minority concentration;

(C) The PHA has prepared maps that show various areas with housing opportunities outside areas of poverty or minority concentration both within its jurisdiction and neighboring its jurisdiction; has assembled information about the characteristics of those areas which may include information about job opportunities, schools, transportation and other services in these areas; and can demonstrate that it uses the maps and area characteristics information when briefing rental voucher holders about the full range of areas where they may look for housing;

(D) The PHA's information packet for rental voucher holders contains either a list of owners who are willing to lease (or properties available for lease) under the rental voucher program; or a current list of other organizations that will help families find units and the PHA can demonstrate that the list(s) includes properties or organizations that operate outside areas of poverty or minority concentration;

(E) The PHA's information packet includes an explanation of how portability works and includes a list of portability contact persons for neighboring housing agencies, with the name, address and telephone number of each, for use by families who move under portability; and

(F) PHA documentation shows that the PHA has analyzed whether rental voucher holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, if such difficulties have been found, PHA documentation shows that the PHA has analyzed whether it is appropriate to seek approval of exception payment standard amounts in any part of its jurisdiction and has sought HUD approval of exception payment standard amounts when necessary. 5 points.

(ii) The PHA's SEMAP certification does not support the statement in paragraph (g)(3)(i) of this section. 0 points.

(h) *Deconcentration bonus.* (1) Submission of deconcentration data in the HUD-prescribed format for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50th percentile rent to provide access to a broad range of housing opportunities throughout a metropolitan area in accordance with 888.113(c) of this title, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMR set at the 50th percentile rent. Submission of deconcentration data for this indicator is optional for all other PHAs. Additional SEMAP points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit with their SEMAP certifications certain data, in a HUD-prescribed format, on the percent of their tenant-based Section 8 families with children who live in, and who have moved during the PHA fiscal year to, low poverty census tracts in the PHA's principal operating area. For purposes of this indicator, the PHA's principal operating area is the geographic entity for which the Census tabulates data that most closely matches the PHA's geographic jurisdiction under State or local law (e.g., city, county, metropolitan statistical area) as determined by the PHA, subject to HUD review. A low poverty census tract is defined as a census tract where the poverty rate of the tract is at or below 10 percent, or at or below the overall poverty rate for the principal operating area of the PHA, whichever is greater. The PHA determines the overall poverty rate for its principal operating area using the most recent available decennial Census data. Family data used for the PHA's

analysis must be the same information as reported to MTCS for the PHA's tenant-based Section 8 families with children. If HUD determines that the quantity of MTCS data is insufficient for adequate analysis, HUD will not award points under this bonus indicator. Bonus points will be awarded if:

(i) Half or more of all Section 8 families with children assisted by the PHA in its principal operating area at the end of the last completed PHA fiscal year reside in low poverty census tracts;

(ii) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area during the last completed PHA fiscal year is at least 2 percentage points higher than the percent of all Section 8 families with children who reside in low poverty census tracts at the end of the last completed PHA fiscal year; or

(iii) The percent of Section 8 families with children who moved to low-poverty census tracts in the PHA's principal operating area over the last two completed PHA fiscal years is at least 2 percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the second to last completed PHA fiscal year.

(iv) State and regional PHAs that provide Section 8 rental assistance in more than one metropolitan area within a State or region make these determinations separately for each metropolitan area or portion of a metropolitan area where the PHA has assisted at least 20 Section 8 families with children in the last completed PHA fiscal year.

(2) *HUD verification methods:* PHA data submitted for the deconcentration bonus, the IA annual audit report covering the PHA fiscal year entered on the SEMAP certification, and on-site confirmatory review if performed.

(3) *Rating:* (i) The data submitted by the PHA for the deconcentration bonus shows that the PHA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section. 5 points.

(ii) The data submitted by the PHA for the deconcentration bonus does not show that the PHA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section. 0 points.

(i) *Payment standards*. (1) This indicator shows whether the PHA has adopted a payment standard schedule that establishes voucher payment standard amounts by unit size for each FMR area in the PHA jurisdiction, and, if applicable, separate payment standard amounts by unit size for a PHA-designated part of an FMR area, which payment standards do not exceed 110 percent of the current applicable published FMRs and which are not less than 90 percent of the current applicable published FMRs (unless a higher or lower payment standard amount is approved by HUD). (982.503 of this chapter.) For purposes of this paragraph, payment standards that do not exceed 110 percent of the current applicable published FMRs include exception payment standards established by the PHA in accordance with 982.503(c)(iii).

(2) *HUD verification method:* PHA data submitted on the SEMAP certification form concerning payment standards.

(3) *Rating:* (i) The PHA's voucher program payment standard schedule contains payment standards which do not exceed 110 percent of the current applicable published FMR and which are not less than 90 percent of the current applicable published FMR (unless a higher or lower payment standard amount is approved by HUD). 5 points.

(ii) The PHA's voucher program payment standard schedule contains payment standards which exceed 110 percent of the current applicable published FMRs or which are less than 90 percent of the current applicable published FMRs (unless a higher or lower payment standard amount is approved by HUD). 0 points.

(j) *Annual reexaminations*. (1) This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months. (24 CFR 5.617).

(2) *HUD verification method: MTCS report*–Shows percent of reexaminations that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the PHA's electronic reporting of the annual reexamination on Form HUD-50058 and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual reexaminations is permitted.

(3) *Rating:* (i) Fewer than 5 percent of all PHA reexaminations are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all PHA reexaminations are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all PHA reexaminations are more than 2 months overdue. 0 points.

(k) *Correct tenant rent calculations*. (1) This indicator shows whether the PHA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program. (24 CFR 982 subpart K).

(2) *HUD verification method: MTCS report*–Shows percent of tenant rent and family's share of the rent to owner calculations that are incorrect based on data sent to HUD by the PHA on Forms HUD-50058. The MTCS data used for verification cover only voucher program and regular certificate program tenancies, and do not include rent calculation discrepancies for manufactured home owner rentals of manufactured home spaces under the certificate program or for proration of assistance under the noncitizen rule.

(3) *Ratings:* (i) 2 percent or fewer of PHA tenant rent and family's share of the rent to owner calculations are incorrect. 5 points.

(ii) More than 2 percent of PHA tenant rent and family's share of the rent to owner calculations are incorrect. 0 points.

(l) *Pre-contract housing quality standards (HQS) inspections*. (1) This indicator shows whether newly leased units pass HQS inspection on or before the beginning date of the assisted lease and HAP contract. (24 CFR 982.305).

(2) *HUD verification method: MTCS report*–Shows percent of newly leased units where the beginning date of the assistance contract is before the date the unit passed HQS inspection.

(3) *Rating:* (i) 98 to 100 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 5 points.

(ii) Fewer than 98 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 0 points.

(m) *Annual HQS inspections*. (1) This indicator shows whether the PHA inspects each unit under contract at least annually. (24 CFR 982.405(a))

(2) *HUD verification method: MTCS report*–Shows percent of HQS inspections that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the PHA's electronic reporting of the annual HQS inspection on Form HUD-50058, and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual HQS inspections is permitted.

(3) *Rating:* (i) Fewer than 5 percent of annual HQS inspections of units under contract are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 0 points.

(n) *Lease-up.* (1) This indicator shows whether the PHA enters HAP contracts for the number of units reserved under ACC for at least one year.

(2) *HUD verification method:* (i) Percent of units leased during the last completed PHA fiscal year as determined by taking unit months under HAP contract as shown on the PHA's last year-end operating statement recorded in the HUD accounting system, and dividing by the number of unit months available for leasing, based on the number of reserved units for which HUD has obligated funding under ACC and adjusted to exclude units associated with funding increments obligated during the last PHA fiscal year and units obligated for litigation.

(ii) In the event a PHA has not leased the percent of units needed to attain the points specified under paragraph (n)(3) of this section due to escalating housing assistance payments and insufficient allocated

budget authority to support that percent of lease-up, HUD will consider alternatively, whether the PHA has expended that percent of allocated budget authority.

(3) *Rating:* (i) The percent of units leased during the last PHA fiscal year was 98 percent or more, or the percent of allocated budget authority expended during the last PHA fiscal year was 98 percent or more. 20 points.

(ii) The percent of units leased during the last PHA fiscal year was 95 to 97 percent, or the percent of allocated budget authority expended during the last PHA fiscal year was 95 to 97 percent. 15 points.

(iii) The percent of units leased during the last PHA fiscal year was less than 95 percent, and the percent of allocated budget authority expended during the last PHA fiscal year was less than 95 percent. 0 points.

(o) *Family self-sufficiency (FSS) enrollment and escrow account*s-(1) This indicator applies only to PHAs with mandatory FSS programs. The indicator consists of 2 components which show whether the PHA has enrolled families in the FSS program as required, and the extent of the PHA's progress in supporting FSS by measuring the percent of current FSS participants with FSS progress reports entered in MTCS that have had increases in earned income which resulted in escrow account balances. (24 CFR 984.105 and 984.305)

(2) *HUD verification method: MTCS report*–Shows number of families currently enrolled in FSS. This number is divided by the number of mandatory FSS slots, as determined under 984.105 of this chapter. An MTCS report also shows the percent of FSS families with FSS progress reports who have escrow account balances. HUD also uses information reported on the SEMAP certification by initial PHAs concerning FSS families enrolled in their FSS programs but who have moved under portability to the jurisdiction of another PHA.

(3) *Rating:* (i) The PHA has filled 80 percent or more of its mandatory FSS slots and 30 percent or more of FSS families have escrow account balances. 10 points.

(ii) The PHA has filled 60 to 79 percent of its mandatory FSS slots and 30 percent or more of FSS families have escrow account balances. 8 points.

(iii) The PHA has filled 80 percent or more of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 5 points.

(iv) 30 percent or more of FSS families have escrow account balances, but fewer than 60 percent of the PHA's mandatory FSS slots are filled. 5 points.

(v) The PHA has filled 60 to 79 percent of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 3 points.

(vi) The PHA has filled fewer than 60 percent of its mandatory FSS slots and less than 30 percent of FSS families have escrow account balances. 0 points.

(p) *Success rate of voucher holders.* (1) This indicator shows whether voucher holders were successful in leasing units with voucher assistance. This indicator applies only to PHAs that have received approval to establish success rate payment standard amounts in accordance with 982.503(e). This indicator becomes initially effective for the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.

(2) *HUD verification method: MTCS Report*.

(3) *Rating (5 points):* (i) The proportion of families issued rental vouchers during the last PHA fiscal year that have become participants in the voucher program is more than the higher of:

(A) 75 percent; or

(B) The proportion of families issued rental vouchers that became participants in the program during the six month period utilized to determine eligibility for success rate payment standards under 982.503(e)(1) plus 5 percentage points; and

(ii) The percent of units leased during the last PHA fiscal year was 95 percent or more, or the percent of allocated budget authority expended during the last PHA fiscal year was 95 percent or more following the methodology of 985.3(n).

Subpart B Program Operation

985.101 SEMAP certification.

(a) A PHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

(1) The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

(2) A PHA that subcontracts administration of its program to one or more subcontractors shall require each subcontractor to submit the subcontractor's own SEMAP certification on the HUD-prescribed form to the PHA in support of the PHA's SEMAP certification to HUD. The PHA shall retain subcontractor certifications for 3 years.

(3) A PHA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the PHA in providing its certification.

(b) Failure of a PHA to submit its SEMAP certification within 60 calendar days after the end of its fiscal year will result in an overall performance rating of troubled and the PHA will be subject to the requirements at 985.107.

(c) A PHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

985.102 SEMAP profile.

Upon receipt of the PHA's SEMAP certification, HUD will rate the PHA's performance under each SEMAP indicator in accordance with 985.3. HUD will then prepare a SEMAP profile for each PHA which shows the rating for each indicator, sums the indicator ratings, and divides by the total possible points to arrive at a PHA's overall SEMAP score. SEMAP scores shall be rounded off to the nearest whole percent.

985.103 SEMAP score and overall performance rating.

(a) *High performer rating.* PHAs with SEMAP scores of at least 90 percent shall be rated high performers under SEMAP. PHAs that achieve an overall performance rating of high performer may receive national recognition by the Department and may be given competitive advantage under notices of fund availability.

(b) *Standard rating.* PHAs with SEMAP scores of 60 to 89 percent shall be rated standard.

(c) *Troubled rating.* PHAs with SEMAP scores of less than 60 percent shall be rated troubled.

(d) *Modified rating on an indicator.* A rating on any of the indicators at 985.3(a) through 985.3(h) will be subject to change after HUD receives the PHA's annual audit report or after HUD conducts a confirmatory review if the audit report or the confirmatory review report contains information that the PHA's SEMAP certification concerning an indicator is not accurate.

(e) *Modified or withheld overall rating.* (1) Notwithstanding a PHA's SEMAP score, HUD may modify or withhold a PHA's overall performance rating when warranted by circumstances which have bearing on the SEMAP indicators such as a PHA's appeal of its overall rating, adverse litigation, a conciliation agreement under Title VI of the Civil Rights Act of 1964, fair housing and equal opportunity monitoring and compliance review findings, fraud or misconduct, audit findings or substantial noncompliance with program requirements.

(2) Notwithstanding a PHA's SEMAP score, if the latest IA report submitted for the PHA under the Single Audit Act indicates that the auditor is unable to provide an opinion as to whether the PHA's financial statements are presented fairly in all material respects in conformity with generally accepted accounting principals, or an opinion that the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole, the PHA will automatically be given an overall performance rating of troubled and the PHA will be subject to the requirements at 985.107.

(3) When HUD modifies or withholds a rating for any reason, it shall explain in writing to the PHA the reasons for the modification or for withholding the rating.

985.104 PHA right of appeal of overall rating.

A PHA may appeal its overall performance rating to HUD by providing justification of the reasons for its appeal. An appeal made to a HUD hub or program center or to the HUD Troubled Agency Recovery Center and denied may be further appealed to the Assistant Secretary.

985.105 HUD SEMAP responsibilities.

(a) Frequency of SEMAP assessments

(1) *Annual review.* Except as provided in paragraph (a)(2) of this section, HUD shall assess each PHA's performance under SEMAP annually and shall assign each PHA a SEMAP score and overall performance rating.

(2) *Biennial review for small PHAs*.

HUD shall assess and score the performance of a PHA with less than 250 assisted units once every other PHA fiscal year, unless the PHA:

(i) Elects to have its performance assessed on an annual basis; or

(ii) Is designated as troubled, in accordance with 985.103.

(b) Notification to PHA. No later than 120 calendar days after the PHA's fiscal year end, HUD shall notify each PHA in writing of its rating on each SEMAP indicator, of its overall SEMAP score and of its overall performance rating (high performer, standard, troubled). The HUD notification letter shall identify and require correction of any SEMAP deficiencies (indicator rating of zero) within 45 calendar days from date of HUD notice.

(c) *On-site confirmatory review.* HUD may conduct an on-site confirmatory review to verify the PHA certification and the HUD rating under any indicator.

(d) *Changing rating from troubled.* HUD must conduct an on-site confirmatory review of a PHA's performance before changing any annual overall performance rating from troubled to standard or high performer.

(e) *Appeals.* HUD must review, consider and provide a final written determination to a PHA on its appeal of its overall performance rating.

(f) *Corrective action plans.* HUD must review the adequacy and monitor implementation of PHA corrective action plans submitted under 985.106(c) or 985.107(c) and provide technical assistance to help the PHA improve program management. If a PHA is assigned an overall performance rating of troubled, the PHA's corrective action plan must be approved in writing by HUD.

985.106 Required actions for SEMAP deficiencies.

(a) When the PHA receives the HUD notification of its SEMAP rating, a PHA must correct any SEMAP deficiency (indicator rating of zero) within 45 calendar days from date of HUD notice.

(b) The PHA must send a written report to HUD describing its correction of any identified SEMAP deficiency.

(c) If a PHA fails to correct a SEMAP deficiency within 45 calendar days as required, HUD may then require the PHA to prepare and submit a corrective action plan for the deficiency within 30 calendar days from the date of HUD notice.

985.107 Required actions for PHA with troubled performance rating.

(a) On-site reviews.

(1) *Required reviews for troubled PHAs.* Except as provided in paragraph (a)(2) of this section, HUD will conduct an on-site review of PHA program management for any PHA assigned an overall performance rating of troubled to assess the magnitude and seriousness of the PHA's noncompliance with performance requirements.

(2) *On-site reviews for small PHAs.* Notwithstanding paragraph (a)(1) of this section, HUD may elect not to conduct an on-site review of a troubled PHA, if:

(i) The PHA has less than 250 assisted units; and

(ii) HUD determines that an on-site review is unnecessary to determine the needs of the PHA and the actions required to address the program deficiencies.

(b) *HUD written report.* HUD must provide the PHA a written report of its on-site review containing HUD findings of program management deficiencies, the apparent reasons for the deficiencies, and recommendations for improvement.

(c) *PHA corrective action plan.* Upon receipt of the HUD written report on its on-site review, the PHA must write a corrective action plan and submit it to HUD for approval. The corrective action plan must:

(1) Specify goals to be achieved;

(2) Identify obstacles to goal achievement and ways to eliminate or avoid them;

(3) Identify resources that will be used or sought to achieve goals;

(4) Identify a PHA staff person with lead responsibility for completing each goal;

(5) Identify key tasks to reach each goal;

(6) Specify time frames for achievement of each goal, including intermediate time frames to complete each key task; and

(7) Provide for regular evaluation of progress toward improvement.

(8) Be signed by the PHA board of commissioners chairperson and by the PHA executive director. If the PHA is a unit of local government or a state, the corrective action plan must be signed by the Section 8 program director and by the chief executive officer of the unit of government or his or her designee.

(d) *Monitoring.* The PHA and HUD must monitor the PHA's implementation of its corrective action plan to ensure performance targets are met.

(e) *Use of administrative fee reserve prohibited*. Any PHA assigned an overall performance rating of troubled may not use any part of the administrative fee reserve for other housing purposes (see 24 CFR 982.155(b)).

(f) *Upgrading poor performance rating.* HUD shall change a PHA's overall performance rating from troubled to standard or high performer if HUD determines that a change in the rating is warranted because of improved PHA performance and an improved SEMAP score.

985.108 SEMAP records.

HUD shall maintain SEMAP files, including certifications, notifications, appeals, corrective action plans, and related correspondence for at least 3 years.

985.109 Default under the Annual Contributions Contract (ACC).

HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC.

HUD Notices, Rules and Other Information

6/22/09 PIH 2009-18; State and Local Law Applicability to Lease Terminations in the Housing Choice Voucher (HCV) Program

U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of:	**Notice PIH 2009-18 (HA)**
Directors of HUD Regional and Field Offices of Public Housing; PIH Program Center Coordinators; Public Housing Agencies Administering Housing Choice Voucher Programs	Issued: June 22, 2009
	Expires: June 30, 2010
	Cross References:

Subject: State and Local Law Applicability to Lease Terminations in the Housing Choice Voucher (HCV) Program

1. **Purpose.** This notice provides clarification on the applicability of State and local laws in the Housing Choice Voucher (HCV) Program regarding termination of tenancies by the owner for other good cause at 24 CFR 982.310.

2. **Background.** The HCV program regulations provide at 24 CFR 982.310 that during the term of the lease, the owner may not terminate the tenancy except for the following grounds: (1) serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease; (2) violation of federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or (3) other good cause.

   The regulation at 24 CFR 982.310(d) provides that "other good cause" may include, but is not limited to, any of the following examples:

   (1) Failure by the family to accept the offer of a new lease or revision;
   (2) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the units or premises;
   (3) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential unit; or
   (4) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental.)

   The regulation further provides that the owner must give the tenant a written notice that specifies the grounds for termination of the tenancy during the term of the lease. This notice may be included in, or may be combined with, any owner eviction notice to the tenant. The eviction notice is a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. (See 24 CFR 982.310(a) and (e)).

3. **Other good cause under 24 CFR 982.310(d) and State and local law.** State and local governments may enact rent control and tenant protection laws and ordinances. In such instances these rental protections operate along with the HCV program regulations. The regulation at 982.310(d)(1)(vi) provides that other good cause "may include, but is not limited to, any of the following examples…". The use of 'may include'

means that "other good cause" *may* or *may not* include the examples, as opposed to listed examples constituting good cause in all circumstances.

For example, while good cause "may include" a business or economic reason (e.g., there is no State or local law prohibiting termination of tenancy for such cause), in other circumstances it may *not* include a business or economic reason. If a State or local law prohibits the termination or tenancy for a business or economic reason such as a desire to lease the unit at a higher rental, then that specific grounds for termination of the tenancy does not constitute 'other good cause" under 24 CFR 982.310(d) in that particular instance. Therefore, the owner may not terminate the tenancy of the participating voucher family for that reason.

In summary, nothing in 24 CFR 982.310(d)(1) pre-empts any applicable State or local laws that restrict or prohibit the termination of tenancy. This applies to all HCV vouchers.

In addition, it is further noted that Section 8(t) of the United States Housing Act of 1937 provides that a family that receives an enhanced voucher may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project. A family that receives an enhanced voucher has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance (e.g., the rent is reasonable, unit meets HQS, etc.). The owner may not terminate the tenancy of a family that exercises its right to remain except for a serious or repeated lease violation or other good cause.

4. **Further Information.** Any questions pertaining to the notice may be addressed to the Housing Voucher Management and Operations Division at (202) 708-0477.

/S/
Paula O. Blunt, General Deputy Assistant Secretary
for Public and Indian Housing

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

SPECIAL ATTENTION OF:
Regional Directors; State and Area Coordinators; Public Housing Hub Directors; Program Center Coordinators; Troubled Agency Recovery Center Directors; Special Applications Center Director; Public Housing Agencies; Housing Choice Voucher/Section 8 Public Housing Agencies; Resident Management Corporations

NOTICE PIH 2010-26 (HA)

Issued: July 26, 2010

Expires: July 31, 2011

Cross Reference: Notice
PIH 2003-31 (HA)
PIH 2006-13 (HA)
PIH Letter L-2007-05
PIH Notice 2009-5

Subject: Non-Discrimination and Accessibility for Persons with Disabilities

1. PURPOSE: The purpose of this Notice is to remind recipients of Federal funds of their obligation to comply with pertinent laws and implementing regulations which mandate non-discrimination and accessibility in federally funded housing and non-housing programs for persons with disabilities.

   Additionally, this Notice provides information on key compliance elements of the relevant regulations and examples and resources to enhance recipients' compliance efforts. However, specific regulations must be reviewed in their entirety for full compliance.

2. APPLICABILITY: This Notice applies to all public housing programs and activities receiving Federal financial assistance either directly or indirectly from the Office of Public and Indian Housing. This Notice is not applicable to ONAP programs, Tribes or TDHEs.

   Federal financial assistance and programs or activities are both defined very broadly. See 24 CFR 8.3 for the regulatory definitions.

   Contractors or other agents of public housing agencies (PHAs) performing covered work or conducting covered activities on behalf of PHAs are subject to the requirements of this Notice.

3. BACKGROUND: Although the Department is aware that many HUD recipients are doing an excellent job of providing accessibility in their programs for persons with disabilities, it has been brought to the Department's attention that other HUD recipients may not be in compliance with the subject laws and implementing regulations. As part of an effort to

achieve maximum compliance, this Notice will serve to emphasize the importance of compliance.

4. NOTIFICATIONS: It is recommended that PHAs and other recipients of Federal PIH funds provide this Notice to all current and future contractors, agents and housing choice voucher program owners participating in covered programs/activities or performing work covered under the above laws referenced below and implementing regulations.

I. STATUTORY/REGULATORY REQUIREMENTS

Some statutory and regulatory provisions overlap others. Where there is a conflict, the most stringent provision applies including any state or local laws/regulations/codes which may be more stringent than Federal requirements.

A. SELF-EVALUATIONS/NEEDS ASSESSMENTS/TRANSITION PLAN

1. Section 504 of the Rehabilitation Act of 1973 (Section 504)[1]; Title II of the Americans with Disabilities Act of 1990 (ADA)[2]:
   Initially, with the issuance of the Section 504 implementing regulations at 24 CFR Part 8 on June 2, 1988, PHAs were required to conduct needs assessments and develop transition plans to address the identified needs of residents and applicants with disabilities. The transition plan and the needs assessment are required to be available for public review pursuant to 24 CFR § 8.25(c).

   Likewise, PHAs were required to conduct a self-evaluation their current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of Section 504. PHAs must then modify any policies and practices that do not meet the requirements and take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation. See 24 CFR § 8.51.

   The Department's Office of Fair Housing and Equal Opportunity (FHEO) will continue, as a matter of routine, to request copies of any self-evaluations, needs assessments or transition plans in every compliance review and complaint investigation conducted of a HUD recipient. These documents may also be reviewed by other HUD offices in conjunction with funding applications and in addressing non-compliance issues that may arise. In addition, effective January 26, 1992, Title II of the ADA required PHAs to conduct a self-evaluation of their current services, policies and practices. *See* 28 CFR §§ 35.105 and 35.150 (d).

   PHA-Plan regulations pursuant to the U.S. Housing Act of 1937 at 24 CFR § 903.7(a)(1)(ii) require the submission of a statement addressing the housing needs of low-income and very low-income families, including such families with disabilities, who reside in the jurisdiction served by the PHA and families who are on the public housing and housing choice voucher program waiting list.

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[1] 29 U.S.C. § 794; 24 CFR Part 8

[2] 42 U.S.C. §§ 12101 et seq.; 28 CFR Part 35

Additionally, to ensure continued compliance with Section 504 and Title II of the ADA, PHAs are encouraged to cond uct needs assessments and self-evaluations, at least yearly, working with persons/residents with disabilities and local advocacy groups for persons with disabilities. (s*ee* 24 CFR §§ 8.25(c) and 8.51 for addit ional information). Transition p lans should be updated as a result of such needs assessments and self-evaluations. The transition p lan must be made available for public review.

B. SECTION 504/24 CFR 8 – MAJOR PROVISIONS

[*see* http://www.hud.gov/offices/fheo/disabilities/504keys.cfm]

1. New Construction [see 24 CFR § 8.22 (a) and (b)]. A minimum of 5 percent of the total dwelling units, or at least one unit (whichever is greater), must be made accessible for persons with mobil ity impairments. An additional minimum of 2 percent of the units, or at least one unit (whichever is greater) must be made accessible for persons with hearing or vision impairments. In circumstances where greater need is shown, HUD may prescribe higher p ercentages than those listed above. [see 24 CFR 8.22(c).] Accessible units must be on an accessible route from site arrival points and connected by an accessible route to public and common use facilities located elsewhere on the site. Also, see visitabili ty recommendations in Section I. of this Notice.

2. Calculating the Required 5% and 2%. PHAs and all other HUD recipients must calculate and provide the proper number of accessible units consistent with the applicable requirements of Section 504. As noted above for New Construction, 24 CFR § 8.22 (b), requires a minimum of 5 percent of the total dwelling units be made accessible for persons with mobility impairments. An additional 2 percent of the total units must be made accessible for persons with hearin g or vision impairments.

   For example, if a recipient newly constructs a 41 -unit development, 24 CFR § 8.22 (b), requires a minimum of 5 percent of the total dwelling units be made accessible for persons with mobility impairments. That is 41 total units x 5 percent = 2.05 accessible units. However, to provide the minimum of 5 percent requires that any fraction of a whole number, in this example .05 units, be rounded up to 3 units. If the recipient instead rounded the fraction down to 2 units (2 accessib le units ÷ 41total units = 4.8 percent), the recipient would not comply with the requirement that there be a minimum of 5 percent.

   Since 24 CFR § 8.22 (b) requires an additional 2 percent of the total units be made accessible for persons with hearing or v ision impairments, the recipient must provide one such unit as prescribed by the regulation because 41 total units x 2 percent = .82 such units.

   This method of calculating the required number of accessible units also applies to developments subject to the Substantial Alterations requirements of 24 CFR § 8.23 (a).

3. Substantial Alterations [see 24 CFR § 8.23 (a)]. If alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75 percent or more

of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22 (a) and (b) for new construction apply, with the sole exception that load bearing structural members are not required to be removed or altered. If alterations of single elements or spaces of a dwelling unit when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once 5 percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units or entire dwelling units are required to be accessible under this paragraph.

4. Other Alterations [see 24 CFR § 8.23 (b)]. When other alterations are undertaken, including, but not limited to moder nization, such alterations are required to be accessible to the maximum extent feasible, up until a point where at least 5 percent of the units in a project are accessible unless HUD prescribes a higher number or percentage pursuant to 24 CFR § 8.23 (b)(2). PHAs should also include up to 2 percent of the units in a development accessible for persons with hearing and vision impairments. See 24 CFR. § 8.32 (c) for exception regarding removing or altering a load-bearing structural member. (Note: these exceptions do not relieve the recipient from compliance utilizing other units/buildings/developments or other methods to achieve compliance with Section 504.)

5. Adaptable Units: Section 504 permits recipients to construct or convert adaptable units. A dwelling unit that is on an accessible route, as defined by Section 504 and UFAS, and is adaptable and otherwise in compliance with the standards set forth in 24 C.F.R. § 8.32 is "accessible". Adaptable or adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks and grab bars to be added to, raised, lowered, or otherwise altered to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disabilities. An accessible route is defined as a continuous, unobstructed UFAS-compliant path as prescribed in 24 CFR §§ 8.3 and 8.32; UFAS. § 4.3. *See* 24 CFR §§ 8.3 & 8.32; UFAS §§ 4.34.3-4.34.6.

   Adaptable units may be appropriate when the PHA has no immediate demand for accessible units since adaptable units may be more marketable to families without disabilities. **[NOTE: A unit that meets the requirements of the Fair Housing Act Design & Construction requirements is NOT equivalent to an Adaptable or Accessible Unit as defined by UFAS and Section 504.]**

6. Uniform Federal Accessibility Standards (UFAS) 24 CFR § 8.32 –

   Compliance with UFAS shall be deemed to comply with the accessibility requirements of Section 504, 24 CFR §§ 8.21, 8.22, 8.23 and 8.25. Departures from the technical and scoping requirements of UFAS are permitted where substantially equivalent or greater access and usability of the building is provided. *See* 24 CFR § 8.32 (a). The United States Access Board promulgates the minimum guide lines and requirements for accessible design upon which UFAS is based. The UFAS may be found at: http://www.access-board.gov/ufas/ufas-html/ufas.htm
   See also Section I.C., below.

NOTE: On July 23, 2004, the U.S. Access Board issued new Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Guidelines which cover new construction and alteration of a broad range of facilities in the private and public sectors and serve as the basis for enforceable accessibility standards issued by Federal Agencies, including HUD. These Guidelines, once adopted by HUD, will replace the current UFAS. However, they will only apply to new construction and planned alterations and generally will not apply to existing facilities except where altered. HUD recipients are not required to comply with the new Guidelines until such time as HUD adopts them as enforceable standards. Information about the new Guidelines may be obtained from the Access Board website at http://www.access-board.gov/ada-aba/final.cfm.

7. Reasonable Accommodations [see 24 CFR §§ 8.20, 8.21, 8.24 and 8.33]. PHAs and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the PHA and/or recipient. When a family member requires a policy modification to accommodate a disability, PHAs must make the policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue hardship on the PHA's programs. Factors to be considered include:

    - The overall size of the (PHA's) program with respect to the number of employees, number and type of facilities and size of budget;
    - The type of (PHA's) operation, including the composition and structure of the (PHAs) workforce and;
    - The nature and cost of the accommodation needed.

    See discussion on Screening/Reasonable Accommodations in Section 2F(6) and reasonable accommodation under the Fair Housing Act in Section 1E(3). Note: A recipient is not required to accommodate an individual with a disability by modifying a rule or policy that is required by statute. Such a change would be a fundamental alteration of a program.
    For example:

- A PHA that does not allow residents to have pets must modify its policies and allow a tenant with a disability to have an assistance animal if the animal is needed to provide the resident with a disability an equal opportunity to use and enjoy the housing.

- If the recipient provides transportation to PHA sponsored/funded functions or activities then a recipient must ensure that accessible transportation is provided to accommodate persons with disabilities and their aides including the reasonable accompaniment of relative(s) or acquaintance(s).

PHAs and other recipients of Federal financial assistance are also required to provide reasonable accommodations to tenants and applicants with disabilities who need

structural modifications to existing dwelling units and public use and common use areas in order to make effective use of the recipient's program. Under the regulations, this obligation may be met either by making and paying for requested structural modifications or by using other equally effective methods. See 24 CFR §§ 8.20, 8.21(c), 8.24. However, when the PHA is accommodating a resident's disability-related needs without making structural changes, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. *See* 24 CFR §§ 8.21 (c), 8.24 (b) for a variety of suggested, but not all inclusive compliance methods. As with other requested reasonable accommodations, PHAs and other recipients are not required to provide requested structural modifications if doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. However, the PHA or other recipient is required to provide any other reasonable accommodation up to the point that would not result in an undue financial or administrative burden on the particular recipient and/or constitute a fundamental alteration of the program.

For example:

- A PHA may be required to pay for and install a ramp to allow a resident who is a wheelchair user to have access to a dwelling unit that has a step at the front door if the resident cannot be accommodated by relocation to a different unit that meets the resident's needs.

- A PHA may be required to pay for and install grab bars in the resident's dwelling unit in order to accommodate a resident who has a mobility disability.

- A PHA may be permitted to transfer a resident with disabilities who needs an accessible unit to an appropriate available accessible unit or an appropriate accessible unit that can be modified in lieu of modifying the tenant's current inaccessible unit.

Note: This requirement to accommodate individual tenant's requests for accessible features is separate from the PHA's affirmative obligation to have an inventory of accessible units available for persons with disabilities pursuant to 24 CFR §§ 8.22, 8.23 and 8.25.

8. Distribution of Accessible Dwelling Units (see 24 CFR § 8.26). Required accessible dwelling units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that persons with disabilities have choices of living arrangements comparable to that of other families eligible for assistance under the same program.

9. Occupancy of Accessible Dwelling Units (see 24 CFR § 8.27). PHAs shall adopt suitable means including providing information in its application packets, providing refresher information to each resident during annual re-certifications and posting notices in its Admissions & Occupancy Offices to ensure that information regarding

the availability of accessible dwelling units reaches eligible persons with disabilities. The PHA shall also modify its Admissions, Occupancy and Transfer policies and procedures in order to maximize the occupancy of its accessible units by eligible individuals whose disability requires the accessibility fea tures of the particular unit.

PHAs shall also take reasonable non-discriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, whe n an accessible unit becomes vacant, the PHA shall:

a. First, offer the unit to a current occupant with disabilities in the same development that requires the accessibility features of the vacant accessible unit and occupying a unit not having those accessib ility features. The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability.

b. Second, if there is no current resident in the same development who requires the accessibility features of the vacant, accessible unit, the PHA will offer the unit to a current resident with disabilities residing in another development that requires the accessibility features of the vacant, accessible unit and occupying a unit not having those accessibility features.

c. Third, if there is no current resident who requires the accessibility features of the vacant, accessible unit, then the PHA will offer the vacant, accessible unit to an eligible, qualified applicant with disabilities on the PHA's waiting list who can benefit from the accessible features of the available, accessible unit.

d. Fourth, if there is not an eligible qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessib le unit, then the PHA should offer the available accessible unit to an applicant on the waiting list who does not need the accessible features of the unit. However, the PHA may require the applicant to execute a lease that requires the resident to relocat e, at the PHA's expense, to a non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. *See* 24 CFR § 8.27. Although the regulation does not mandate the use of the lease provision requiring the nondisabled family to move, as a best practice, the Department strongly encourages recipients to incorporate it into the lease. By doing so, a recipient may not have to retrofit add itional units because accessible units are occupied by persons who do not need the features of the units. In addition, making sure that accessible units are actually occupied by persons who need the features will make recipients better able to meet their obligation to ensure that their program is usable and accessible to persons who need units with accessible features. See 24 CFR 8.20.

Note: A PHA may not prohibit an eligible disabled family from accepting a non - accessible unit for which the family i s eligible that may become available before an accessible unit. The PHA is required to modify such a non -accessible unit as needed, unless the modification would result in an undue financial and administrative burden.

10. Most Integrated Setting Appropriate (see 24 CFR Part 8 and 28 CFR Part 35). Section 504 regulations at 24 CFR § 8.4(d) require that recipients administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The regulations provide that a specific class of individuals with disabilities may not be excluded from a program unless the program is limited by Federal statute or executive order to a different class of individuals. Section 504 regulations (see 24 CFR § 8.4(b)(1)(iv)) also state that recipients cannot limit benefits to a particular category of people with disabilities unless it is necessary in order to provide housing services that are as effective as those provided to others. Further, the regulations (see 24 CFR § 8.4(5)(i)) state that in determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would exclude qualified individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance.

11. While Section 504 requires such integration only in programs that are Federally-assisted, Title II of the ADA similarly requires public entities to provide **all** their services in the most integrated setting appropriate to the needs of qualified individuals with disabilities regardless of Federal assistance. The concept of community integration is at the heart of Section 504 and the ADA. Consistent with the standards of Section 504 and the ADA, in most instances, separate programs for individuals with disabilities will not be permitted.

12. PHA Requirements for the Housing Choice Voucher Program (see 24 CFR § 8.28). [*see* Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program.]

    In carrying out the requirements of 24 CFR § 8.28, the PHA or other recipient administering a Housing Choice Voucher Program shall:

    (1) In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt a suitable means to ensure that the notice reaches eligible individuals with disabilities and that they can have an equal opportunity to participate in the application process for the Housing Choice Voucher Program;

    I. In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;

    II. When issuing a Housing Choice Voucher to a family which includes an individual with disabilities, include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;

III. Take into account the special problems of locating an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers; and

IV. In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.

V. If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception payment standard under Sec. 982.505(d) for a regular tenancy under the Section 8 voucher program so that the program is readily accessible to and usable by persons with disabilities.

13. Non-housing Facilities (see 24 CFR § 8.21). Newly constructed non-housing facilities shall be designed to be readily accessible to and usable by people with disabilities. Alterations to existing facilities shall be made accessible to the maximum extent feasible – defined as not imposing an undue financial and administrative burden on the operations of the recipient's program or activity. For existing non-housing facilities, PHAs shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. There are a number of methods included in the regulation at 24 CFR § 8.21(c)(2) which may be used to accomplish accessibility in existing non-housing programs and activities.

    For example:

    - A PHA operates a community center. The PHA wishes to provide a tutoring program and the only available space available after school is on an inaccessible second floor. A child who uses a wheelchair and lives in the PHA development served by the community center wishes to participate in the tutoring program. The PHA may provide space on the first floor for the child to work with his tutor or make tutoring available at another location that is accessible and convenient to the child as an alternative to installing an elevator or chair lift to get the child to the second floor tutoring site.

    Departures from UFAS are permitted as outlined in Section I. B, item 5 of this Notice.

14. Accessibility Standards Accessibility Standards (see 24 CFR § 8.32). The design, construction or alteration of buildings in conformance with sections 3-8 of the UFAS shall be deemed to comply with the accessibility requirements of §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from the requirements of UFAS are permitted where substantially equivalent or greater accessibility is provided. The Section 504 requirements at 24 CFR § 8.32 do not require that building alterations be made when such alterations have little likelihood of being accomplished without removing or altering a load-bearing structural member.

15. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is read ily accessible to and usable by individuals with disabilities. *See* 24 CFR § 8.24(a) and 28 CFR § 35.150 (a).

    Therefore, the PHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, community buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, public transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and recreational centers, are accessible to individuals with disabilities. In the alternative, the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

    Specifically, a PHA may comply with the re quirements of 24 CFR § 8.24 through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. *See* 24 CFR § 8.24 (b).

C. ARCHITECTURAL BARRIERS ACT (ABA) OF 1968/24 CFR 40 – MAJOR PROVISIONS

Accessibility Standards for Design, Construction and Alteration of Publicly Owned Residential Structures (see 24 CFR § 40.4) - The Architectural Barriers Act applies to certain buildings financed with Federal funds to e nsure that they are designed, constructed or altered so as to be accessible to persons with disabilities. The Act applies to buildings, other than a privately owned residential structure, which are (1) constructed or altered by or on behalf of the United States; (2) leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States; or (3) financed in whole or in part by a gra nt or loan made by United States after August 12, 1968, if the structure is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan. *See* 24 CFR § 40.2.

The United States Access Board has issued updated guidelines for the Architectural Barriers Act, as well as the Americans with Disabilities Act. These standards are the *ADA/ABA Accessibility Guidelines*. While other Federal agencies have adopted these updated guidelines as their standards, at present HUD uses the Uniform Federal Accessibility Standards (UFAS).

UFAS Notes:

- Under the Architectural Barriers Act, four standard setting agencies —the General Services Administration, HUD, the Department of Defense, a nd the United States Postal Service (USPS) are responsible for development of the standards for Federal facilities. UFAS is HUD's current standard. See Note in Section I.B.5. The UF AS is available at http://www.access- board.gov/ufas/ufas-html/ufas.htm.

- Figure 47(a) in UFAS does not permit the water closet to encroach on the clear, unobstructed (*see* UFAS §3.5) floor space required to provide an unobstructed 60º turning circle. *See* UFAS § 4.34.2(2).

- UFAS includes a definition of structural impracticability that does not require changes if such changes would result in the removal or alteration of a load - bearing structural member and/or an increased cost of 50 percent or more of the value of the element of the building or facility. *See* UFAS § 3.5. This does not alleviate the recipient's responsibility for making its programs and housing units accessible to persons with disabilities. Recipients instead should look to HUD's regulations for Section 504 at 24 CFR Part 8 in order to ensure compliance.

- The exception for bathrooms found at Section 4.22.3 of UFAS is not applicable to dwelling unit bathrooms.

- UFAS Section 4.34.2(15)(c) requires at least two bedrooms in dwelling uni ts with two or more bedrooms to be accessible and located on an accessible route. PHAs need to be mindful that new construction or substantial rehabilitation of multistory dwelling units must be in compliance with this requirement. Further, the Department wishes to encourage designs that provide persons with disabilities access to all parts of their dwelling units, and therefore encourages PHAs to take advantages of the strategies outlined in the PIH guidebook, *Strategies for Providing Accessibility and Visitability for Hope VI and Mixed Finance Homeownership*." This guidebook may be found at the following link: http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm.

- Because UFAS does not fully address accessibility of units for persons with impaired hearing, for the 2 percent units that are required to be accessible for persons with hearing impairments, it is recommended that PHAs follow the July 2004 ADA/ABA Accessibility Guidelines, Section 809.5, Residential Dwelling Units with Communication Features. The ADA/ABA Accessibility Guidelines are available from the U.S. Access Board. See http://www.access-board.gov/ada-aba/. PHAs may also follow the 2003 edition of ICC/ANSI A117.1 Standard for Accessible and Usable Buildings and Facilities, Chapter 10, Section 1005. These Standards are available through the International Code Council, 500 New Jersey Avenue NW, Washington, DC 20001. See also ICC's Website at http://www.iccsafe.org.

Note: The U. S. Access Board issued new ADA and ABA Accessibility Guidelines in July 2004. See the note about this on Page 4, Item B.5.

D. AMERICANS WITH DISABILITIES ACT OF 1990/28 CFR 35 FOR TITLE II (SEE WWW.ADA.GOV) –

1. Applicability. Title II of the ADA prohibits discrimination on the basis of disability by public entities. Public entity means any state or local government; or any department, agency, special purpose district or other instrumentality of a State or States or local government, including a PHA. *See* 28 CFR §§ 35.102 and 35.104.

2. Maintenance of Accessible Features. A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. (*see* 28 CFR § 35.133).

3. Non-discrimination. A public entity shall operate each service, program or activity so that when viewed in its entirety, each service, program or activity is readily accessible to and usable by individuals with disabilities. (*see* 28 CFR § 35.150).

4. Design and Construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a p ublic entity shall be designed and constructed in such a manner that the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992 (*see* 28 CFR § 35.151(a)).

5. Alterations. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that effects or could effect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities if the alteration was commenced after January 26, 1992. (*see* 28 CFR § 35.151(b)).

6. Accessibility standards. Design, construction, or alteration of facilities in conformance with the UFAS or with the ADA Accessibility Standards (ADA Standards) shall be deemed to comply with requirements of 28 CFR § 35.151 except that the elevator exemption contained at §§ 4.1.3(5) and 4.1.6(1)(j) of the ADA Standards shall not apply. (*see* 28 CFR § 35.151(c)).

7. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity, including those receiving Federal financial assistance so that the program or a ctivity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. *See* 24 CFR § 8.24(a) and 28 CFR § 35.150 (a). (**Note**: The title II regulations at 28 CFR Part 35 contain extensive requirements that apply to public entities, including PHAs, and should be reviewed in their entirety to ensure compliance with the ADA.).

   Therefore, the PHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, commu nity buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and recreational centers, are accessible to individuals with disabilities. In the alternative,

the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, a PHA may comply with the requirements of 28 CFR § 35.150(a) through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. (*See* 24 CFR § 8.24 (b)).

E. THE FAIR HOUSING ACT/24 CFR PART 100

[*see* http://www.usdoj.gov/crt/housing/title8.htm;
see also http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr100_00.html]

1. Illegal Inquiries (24 CFR § 100.202) – The Fair Housing Act makes it unlawful for a housing provider to:

   - Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or

   - Ask about the nature or severity of a disability of such persons.

   Housing providers may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability;

   - An inquiry into an applicant's ability to meet the requirements of tenancy;

   - An inquiry to determine if an applicant is involved in current, illegal use of drugs;

   - An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability. A PHA may inquire whether an applicant has a disability for determining if that person is eligible to live in mixed population (elderly/disabled) housing or housing designated for persons with disabilities;

   - An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means a PHA may ask applicants if they need units with accessible features, including units designed to be accessible for persons with hearing and/or visual impairments, or if they qualify for a housing choice voucher designated for persons with disabilities only.

   Verification of eligibility for PHA programs and benefits for persons with disabilities: PHAs are required to verify that an applicant qualifies as a person with a disability

before permitting them to move to housing designated for persons with disabilities, or granting the $400 rent calculation deduction, disability expense allowance, or deduction for unreimbursed medical expenses. Applicants and residents cannot be compelled to reveal that they have a disability; however, if they do not, they may not receive any of the benefits that such status confers. The wisest course is to ask **all** applicants whether they wish to claim disability status or need any special unit features or methods of communication for persons with disabilities.

> **Note:** The PHA should explain the consequences of the disclosure of one's disability as having possible benefits in rent calculation or an accessible unit, and required verification of disability prior to receipt of the particular benefit at issue. The verification issue is discussed in greater detail in Chapter 4 of the *Public Housing Occupancy Guidebook* (June 2003).
>
> Verification of disability and need for requested reasonable accommodation(s): To verify that an applicant is a person with a disability, PHA staff can first check to see whether the applicant is under age 62 and receives either Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) income. Receipt of such disability income is sufficient verification that an individual qualifies as a person with a disability. However, individuals with disabilities who do not receive SSI or SSDI may still qualify as a person with a disability under the statutory definitions of disability. In these cases, the individual with a disability may need to provide supporting documentation. (**Note**: Refer to Chapter 4 of the *Public Housing Occupancy Guidebook* (June 2003) for further information.)

If a person requests a reasonable accomodation, then the PHA may need to verify that the person is a qualified individual with a disability and whether a requested accommodation is necessary to provide the individual with an equal opportunity to use or enjoy a dwelling unit, including the public and common areas. In doing so, PHAs should only ask for information that is actually necessary to verify that the person has a disability and that there is a reasonable nexus between the individual's disability and the requested accommodation(s). PHAs are not permitted to inquire about the nature or severity of the person's disability. Further, PHA staff may never inquire about an individual's specific diagnosis or details of treatment. If a PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment and/or information regarding the nature or severity of the person's disability, the PHA should immediately dispose of this confidential information; this information should never be maintained in the individual's file. If the information needs to disposed of, the PHA should note in the individual's file that verification of a disability (as opposed to a specific disability), and special features required was received, the date received and the name and address of the person/organization that provided the verification. Under no circumstances should a PHA request an applicant's or resident's medical records, nor should PHAs require that applicants or residents submit to physical examinations or medical tests such as TB testing or AIDS testing as a condition of occupancy. For further information about verification of disability related to requests for reasonable accomodation, see HUD and the Department of Justice (DOJ) *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).

http://www.hud.gov/utilities/intercept.cfm?/offices/fheo/library/huddojstatement.pdf

Note: It is a violation of Section 504 and the Fair Housing Act for a PHA to inquire whether an applicant or tenant is capable of "living independently." Courts have consistently held that this is not a legitimate inquiry to make of applicants or residents in HUD-assisted housing and PHAs should ensure that their screening materials do not include questions related to such an inquiry.

2. Reasonable Modification to Existing Premises (see 24 CFR § 100.203) – Applies to private owners participating in housing choice voucher programs or other tenant-based programs, as well as to PHA owners of existing public housing units . (see Note below.)

   Under the Fair Housing Act, it is unlawful for an owner to refuse to permit a person with a disability, at their own expense, to make reasonable modifications of existing premises occupied or about to be occupied by a person with a disability if such modification may be necessary to afford the person with a disability full enjoyment of the premises. Under certain circumstances the owner may require the tenant to pay into an escrow account funds necessary to restore the interior of the unit to its original condition if the modification would interfere with the owner or next resident's full enjoyment of the premises (see regulation for further requirements and guidance.) An owner may require that a resident restore modifications to the interior of the unit.

   Note: PHAs must follow the more stringent reasonable accommodation requirements of 24 CFR §§ 8.4, 8.20, 8.24 and 8.33, which require PHAs to pay the cost of structural changes to facilities unless the PHA can accommodate the individual with a disability by equally effective means, or unless such structural changes would result in an undue financial and administrative burden (in such cases, the PHA must provide other alternative reasonable accommodation(s).) See also the discussion of reasonable accommodation under Section 504 above. For further information about the reasonable modifications provisions of the Fair Housing Act, see the HUD and DOJ Joint Statement on Reasonable Modifications Under the Fair Housing Act, issued May 5, 2008. This statement is available at: http://www.hud.gov/officies/fheo/disabilities/reasonable_modifications_mar08.pdf.

3. Reasonable Accommodation (see 24 CFR § 100.204) - Applies to private owners participating in Housing Choice Voucher programs, PHAs and all housing providers that are recipients of Federal financial assistance. PHAs are also covered under Section 504. (*see* Section I.B. above.) The Fair Housing Act makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (see regulation for further requirements and guidance). *See* HUD and DOJ *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).

http://www.hud.gov/utilities/intercept.cfm?/offices/fheo/library/huddojstatement.pdf.

4. Design and Construction Requirements (see 24 CFR § 100.205) - applies to housing regardless of whether it receives Federal financial assistance. The Fair Housing Act requires that "covered multifamily dwellings" (see definition below) built for first occupancy after March 13, 1991, shall be designed and constructed so that:

   a. At least one building entrance is on an accessible route unless it is impractical due to terrain or unusual characteristics of the site [see 24 CFR § 100.205(a)],
   b. Public and common use areas are accessible [see 24 CFR § 100.205(c)(1)],
   c. All doors into and within all premises are wide enough for passage by persons using wheelchairs [see 24 CFR § 100.205(c)(2),
   d. All premises within covered multifamily dwelling units contain the following features of adaptable design:

      (i) An accessible route into and through the dwelling unit [see 24 CFR § 100.205(c)(3)(i)]
      (ii) Light switches, electrical outlets, thermostats and other environmental controls, are in accessible locations [see 24 CFR § 100.205(c)(3)(ii)]
      (iii) Reinforcements in bathroom walls for later installation of grab bars [see 24 CFR § 100.205(c)(3)(iii)]
      (iv) Usable kitchens and bathrooms for people using wheelchairs [see 24 CFR § 100.205(c)(3)(iv)]

   The Act defines covered multifamily dwelling as:

   (A) buildings consisting of 4 or more units if such buildings have one or more elevators; and
   (B) ground floor units in other buildings consisting of 4 or more units.

   In most cases, multistory dwelling units are not covered by the Fair Housing Act's design and construction requirements. There are two exceptions: (1) If an interior elevator provides access within an individual multistory dwelling unit, that unit is covered, and all floors of the multistory unit must meet the Fair Housing Act's design and construction requirements; and (2) If a multistory townhouse is located in a building that has one or more public elevators, the primary entrance level of the multistory townhouse must be the story served by the elevator, and that story must comply with the Fair Housing Act requirements, including providing an accessible bathroom or powder room on that story.

   On March 6, 1991, the Department published Fair Housing Accessibility Guidelines to give the building industry a safe harbor for compliance with the accessibility requirements of the Act. *See* 56 Federal Register 9472-9515, March 6, 1991. [*see* http://www.hud.gov/offices/fheo/disabilities/fhefhag.cfm.] These Guidelines were supplemented by the following notice, "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines", published in the Federal Register on June 28, 1994 (59 Federal Register 33362-33368, June 28,

1994). These Guidelines and the Supplemental Notice apply ONLY with respect to the accessibility requirements of the Fair Housing Act.

Following reviews of certain building code documents and three subsequent editions of the ANSI A117.1 standard, the Department currently recognizes ten documents as providing a safe harbor for meeting the accessibility requirements of the Fair Housing Act. **NOTE**: Once again, these safe harbors only apply to the Fair Housing Act. They do not apply to the accessibility requirements mandated under Section 504 of the Rehabilitation Act for HUD-assisted housing. The ten safe harbors are:

1. HUD's March 6, 1991 Fair Housing Accessibility Guidelines (the Guidelines) and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines;

2. ANSI A117.1-1986 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations and the Guidelines;

3. CABO/ANSI A117.1-1992 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations, and the Guidelines;

4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations, and the Guidelines;

5. HUD's Fair Housing Act Design Manual;

6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000;

7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes; and

8. 2003 International Building Code (IBC), with one condition. Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."

9. ICC/ANSI A117.1-2003 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations and the Guidelines; and

10. 2006 International Building Code, with a January 31, 2007, erratum to correct the text missing from Section 1107.7.5 and interpreted in accordance with the relevant 2006 IBC Commentary.

Note: It should be noted that the ANSI A117.1 standard contains only technical criteria, whereas the Fair Housing Act, HUD's regulations, and the Guidelines contain both scoping and technical criteria. Therefore, in using any of the ANSI standards, it is necessary to also consult the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements. The CRHA and the IBC contain both scoping and technical criteria and are written in building code language.

In many cases, properties constructed with Federal financial assistance from HUD must meet both Section 504 new construction requirements applicable to PHAs at 24 CFR § 8.22 and the Fair Housing Act design and construction requirements. For example:

- A new construction project consisting of a building with a central public elevator is constructed with Federal financial assistance from HUD is required to have 100 percent of the dwelling units meet the Fair Housing Act design and construction requirements (see 24 CFR 100.205), and of this 100 percent, 5 percent, or at least one unit, whichever is greater, is also required to comply with the stricter accessibility requirements of Section 504 and 24 CFR 8.22. In addition, Section 504 requires that an additional 2 percent of the units, or at least one unit, whichever is greater, be made accessible for persons with visual or hearing impairments. *See* 24 CFR § 8.22 (b).

- In a newly-constructed 100-unit two-story walk-up apartment building with no elevator that is constructed with Federal financial assistance, Section 504 requires a total of five accessible units for persons with mobility disabilities (5 percent of 100 units = 5 accessible units). Further, these 5 units must be located on the ground floor, and be built to comply with the Section 504 accessibility requirements at 24 CFR §§ 8.22 and 8.32. In addition, if half of the 100 units are on the ground floor, all 50 of these ground floor units must comply with the Fair Housing Act's design and construction requirements. In addition, Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. *See* 24 CFR § 8.22 (b). These units can be located on either floor.

Note: Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. These units can be located on either floor of the two-story walk-up, non-elevator building. *See* 24 CFR § 8.22 (b).

- A development consisting entirely of attached multistory dwelling units is not a covered multifamily dwelling for purposes of the Fair Housing Act's design and construction requirements at 24 CFR § 100.205. However, if any of the multistory dwelling units has an internal elevator, that dwelling unit and any public and common use spaces would be required to be accessible under the Fair Housing Act. On the other hand, a development of four or more single-story, attached dwelling units would be covered by the Fair Housing Act's accessibility requirements. In addition, if the development receives Federal financial assistance from HUD, Section 504 requires that 5 percent of the multistory units, or at least one unit, whichever is greater, be accessible for persons with mobility disabilities

and an additional 2 percent of the units, or at least one unit, whichever is greater, be accessible for persons with hearing or vision impairments. *See* 24 CFR § 8.22. For those units required to be accessible for persons with mobility disabilities, this may be accomplished by making 5 percent of the multistory units accessible or by building 5 percent of the development as single-story accessible units.

F. UNIVERSAL DESIGN

Universal Design is a design concept that encourages the construction or rehabilitation of housing and elements of the living environment in a manner that makes them usable by all people, regardless of ability, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products and the building environment more usable to as many people as possible at little or no extra cost. Universal design should strive for social integration and avoidance of discrimination, stigma, and dependence. By designing housing that is accessible to all there will be an increase in the availability of affordable housing for all, regardless of age or ability. *See* http://www.design.ncsu.edu/cud.

Note: Universal Design concepts do not typically reach all of the requirements of accessibility laws like Section 504 and the Fair Housing Act, therefore, care must be taken to ensure that the requirements of all applicable laws are met in projects promoting universal design.

II. PROGRAM SPECIFIC COMPLIANCE/ACTIVITIES

A. HOUSING CHOICE VOUCHER PROGRAM

[*see* Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program.]

1. PHAs may give preference in admission to applicants with disabilities based on local needs and priorities. However, the PHA may not give a preference for admission of persons with a specific disability. *See* 24 CFR § 982.207(b)(3).

2. A person with disabilities may choose a suitable unit from among units available for rent in the local rental market.

   A PHA has the discretion to approve exception payments standards up to 110 percent of the Fair Market Rent when requested as a reasonable accommodation. *See 24 CFR § 982.505(d).* The HUD field office may approve an exception payment standard amount within the upper range (between 110-120% of the Fair Market Rent) if required as a reasonable accommodation for a family that includes a person with disabilities. Any exceptions to the payment standards would be granted as a reasonable accommodation after the family with a person with disabilities locates a unit if needed as a reasonable accommodation. *See* 24 CFR § 982.503(c)(2)(ii) and 24 CFR § 8.28(a)(5). Requests for exception rents above 120% that are needed as a reasonable accommodation for a person with a disability to allow the person to rent an

appropriate unit must be submitted to HUD headquarters for regulatory waiver and approval.

3. A PHA may approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. See 24 CFR § 982.306(d) also see http://www.hud.gov/offices/pih/publications/notices/09/pih2009-22.pdf for additional guidance on live-in aides.

4. Owners of private rental units leased with voucher assistance must make reasonable accommodations in rules, policies, practices or services if necessary for a person with disabilities to use the housing and must allow the person with a disability to make reasonable modifications in accordance with 24 CFR § 100.203. *See also* 24 CFR § 100.204 (a).

B. SECTION 8/HOMEOWNERSHIP OPTION 24 CFR § 982.625 – THRU § 982.643

1. A disabled family meets the first-time homeowner requirement even if the family owned a home within the last three years if use of the homeownership option is needed as a reasonable accommodation so that the housing choice voucher program is readily accessible to and usable by the family member with a disability. See 24 CFR § 982.627 (b)(3

2. The PHA must count welfare assistance for a disabled family in determining whether the family meets the minimum annual income used to determine if a family member qualifies for commencement of home ownership assistance. *See* 24 CFR § 982.627(c)(2)(i).

3. The full-time employment eligibility requirement does not apply to a family with a disability. See 24 CFR§ 982.627(d)(3).

4. The limit on the length of time a family may receive homeownership assistance does not apply to families with disabilities. See 24 CFR§ 982.634(c).

5. Covered homeownership expenses may include principal and interest on mortgage debt incurred by the family to finance the cost of making the home accessible for a family member with a disability if the PHA determines the allowance of such costs is needed as a reasonable accommodation. See 24 CFR § 982.635(c)(vii).

C. PROJECT-BASED VOUCHER PROGRAM

1. PHAs, at their discretion, may choose to use up to 20 percent of their tenant-based assistance for project-based subsidies to encourage the development of projects for persons with disabilities.

2. Under the new law governing project-based assistance, only 25 percent of the units in a project may be subsidized. However, the law allows an exception for units for families with disabilities, elderly families and for families who receive supportive services.

NOTE: 24 CFR § 983.251(d) states that PHAs may give preference to disabled families who need services offered at a particular project in accordance with certain limits. Limits include: families with disabilities that significantly interfere with the ability to obtain and maintain themselves in housing; families who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and for families whom such services cannot be provided in a non-segregated setting. Disabled persons cannot be required to accept the particular services offered in a project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

D. CAPITAL FUND PROGRAM

Planning. Regulations governing the Capital Fund at 24 CFR 968 require compliance with statutory and regulatory requirements prohibiting discrimination against persons with disabilities. PHAs must ensure that all work is in compliance with these requirements in conducting Capital Fund activities.

a. Substantial Alterations. The requirements for new construction at 24 CFR § 8.22(a) and (b) are applicable for all units that are substantially altered. [s*ee* definition of *substantial alteration* at 24 CFR § 8.23(a)].

b. Other Alterations. If alterations are not substantial, then PHAs are required to provide accessible units up to 5 percent of the units in the development or replace the elements being modernized with accessible elements in all units of the project. PHAs should provide an additional 2 percent of the units for persons with hearing or vision impairments. *See* 24 CFR § 8.23 (b).

c. Reasonable Accommodations. PHAs should include in their projections of modernization needs amounts to cover known and projected alterations to units and facilities to address reasonable accommodation requests on a case-by-case basis.

d. Residents/Advocacy Consultation. PHAs are encouraged to ensure that, at least yearly, residents with disabilities and advocates for persons with disabilities have an opportunity to provide input on modernization plans and activities.

The housing needs of persons with disabilities, accessible un its and compliance with Section 504, the ADA, and the FHA are required to be addressed in accordance with 24 CFR § 903.7. Also, see 24 CFR Part 903 for additional related requirements.

Note: Modernization activities covered by statutory civil rights requirements such as Section 504, the ABA, the FHA and the ADA take precedence over non-emergency modernization activities.

E. HOPE VI

1. HOPE VI Notice of Funding Availability (NOFA) Accessibility Requirements.

The design of proposed new construction and/or rehabilitation of housing must conform to the civil rights statutes and regulations delineated in each Grantee's Grant Agreement.

2. Accessible For-Sale Units. The HOPE VI Program encourages PHAs to include 5 percent of for-sale units accessible for persons with mobility impairments and 2 percent for persons with hearing and vision impairments.

3. Visitability. The HOPE VI Program strongly encourages making as many "visitable" units as possible. Visibility standards recommended by HUD apply to units that are not otherwise covered by accessibility requirements. The elements of visitability are also described in the Glossary of HOPE VI terms, which are posted to the HOPE VI website. *See* http://www.hud.gov/hopevi.

4. Advocacy Consultation/Participation. The HOPE VI Program encourages PHAs to work with local advocacy groups that represent persons with disabilities, the elderly and other special needs populations in developing HOPE VI plans.

5. Relocation Units. HOPE VI funds can be used to modify units to be occupied by families in the Housing Choice Voucher Program to make them accessible for residents with disabilities. The Department has determined that the costs of accessibility modification in rental units which are necessary for persons with disabilities who receive tenant-based relocation assistance under the voucher program in connection with a HOPE VI project are eligible HOPE VI expenditures. The method of implementation is to be determined by each individual locality.

6. Homeownership Design Handbook. To order a copy of strategies for providing accessibility and visitability for HOPE VI and mixed finance homeownership, go to the publications and resources page of the HOPE VI website at http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm.

7. Designated Housing Plans. All allocation plan applications for designated housing are now published on HUD's web site at www.hud.gov/pih.

8. Single People with Disabilities. The HOPE VI program encourages 1 bedroom units for single people with disabilities.

9. Accessible Townhouse Design. In addition to the designs already available and in use, HOPE VI will continue to explore design alternatives for townhouse dwellings.

F. CHOICE NEIGHBORHOOD PROGRAM

1. Choice Neighborhood Notice of Funding Availability (NOFA) Accessibility Requirements. Must meet all applicable accessibility standards.

G. ADMISSION/OCCUPANCY

1. Application Process. PHAs must ensure that all employees who are involved in the application process understand how to conduct tenant selection and screening without

discriminating on the basis of any protected class, in particular applicants with disabilities. All application offices must be accessible. The PHA must provide accessible materials for persons with sight and hearing impairments and otherwise provide effective communication, upon request. *See* 24 CFR § 8.6 and § 8.54(c). A PHA must make special arrangements to take the application of persons who are unable to come to the PHA's offices because of a disability. At the initial point of contact with each applicant, the PHA must info rm all applicants of alternative forms of communication. *See* 24 CFR § 8.6.

2. Effective Communication/Provision of Auxiliary Aids & Services :

   The PHA shall provide appropriate auxiliary aids and services, where necessary, to afford an individual with disa bilities an equal opportunity to participate in the PHA's programs, services and activities. In determining what auxiliary aids are appropriate, the PHA shall give primary consideration to the request(s) of the individual with disabilities unless doing so would result in a fundamental alteration of the PHA's programs or in undue financial and administrative burden. If an action would result in such an alteration or burdens, the PHA shall take any other action up to the point that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the PHA's program or activity.

   The PHA is not required to provide individually prescribe d devices, readers for personal use or study, or other devices of a personal nature. *See* 24 CFR § 8.6, 28 CFR §§ 35.160 and 35.161.

   When the PHA has initial contact with the applicant, resident, or member of the public, the PHA staff should ask whether the applicant, resident, or member of the public requires an alternate form of communication. Examples of alternative forms of communication might include, but are not limited to: the provision of a qualified sign language interpreter; having written ma terials explained orally by staff either in person or by telephone; provision of written materials in large/bold font; information on audiocassette; permitting applicants to file applications by mail; and permitting alternative sites for the receipt of app lications.

   In addition, the PHA may never require the applicant to provide, or pay for, his/her own sign language interpreter. Rather, it is always the PHA's responsibility to provide, upon request, a qualified sign language interpreter. However, the PH A's responsibility to provide a qualified sign language interpreter does not preclude an individual's right to have a friend, relative or advocate accompany him/her for purposes of conducting business with the PHA.

3. Live-in-Aides. In some cases, individuals with disabilities may require a live-in-aide. A PHA should consider a person a live-in-aide if the person: (1) is determined to be essential to the care and well being of a family member with a disability; (2) is not obligated to support the family member; and (3) would not be living in the unit except to provide the supportive services. A live-in-aide should not be required to share a bedroom with another member of the household. *See* 24 CFR §§ 966.4(d)(3) and 982.316, 982.402(b).

4. Verification. The PHA may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the housing for which they are applying; that applicants are qualified for deductions used in determining adjusted income; that applicants are entitled to any preference they may claim; and that applicants who have requested a reasonable accommodation have a need for the requested accommodation. A PHA may not require applicants to provide access to confidential medical records in order to verify a disability nor may a PHA require specific details as to the disability. A PHA may require documentation of the manifestation of the disability that causes a need for a specific reasonable accommodation or accessible unit. A PHA may not seek the individual's specific diagnosis, nor may the PHA seek information regarding the nature, severity or effects of the individual's disability.

5. Vacant Accessible Units. In order to maximize the use of accessible features of the unit, if an appropriate size accessible unit is not available, a PHA may consider over-housing an applicant with a disability who needs an accessible unit. *See* 24 CFR § 8.27. If there is not an eligible, qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible or adaptable unit, then the PHA may offer the unit to an applicant on the waiting list or another resident who does not need the accessible features of the unit. *See* 24 CFR § 8.27. However, the PHA may require the applicant or resident to execute a Lease/Lease Addendum that requires the resident to relocate at the PHAs expense to a vacant, non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. See discussion in Section I.B(8).

   In addition, the PHA should maintain an adequate pool of eligible applicants with disabilities who require accessible or adaptable units so that when such a unit becomes available, there is an eligible applicant with disabilities ready and willing to rent the unit. *See* 24 CFR § 8.27. The PHA should also conduct outreach activities for income-eligible persons with disabilities. The outreach activities may include, but are not limited to publicity/advertising in local print media, contacts with advocacy groups representing persons with disabilities and other entities that come into contact with persons with disabilities such as social service agencies, medical providers, etc.

   Reminder – As noted previously in Section I.B.8 – "Occupancy of Accessible Dwelling Units" – Section 504 requires that accessible units must be offered first to a current PHA resident in need of the accessible features of the available accessible unit and second to a qualified applicant with a disability on the PHA's waiting list who requires the accessibility features of the vacant, accessible unit. *See* 24 CFR § 8.27.

6. Screening/Reasonable Accommodations. Many applicants with disabilities will pass screening, will not need a reasonable accommodation, will not need special accessibility features, and will be admitted in exactly the same manner as applicants without disabilities. Applicants who fail screening will receive a rejection letter. This letter must provide all applicants with information concerning the PHA's informal review process and their right to request a hearing. The letter must also state that applicants with disabilities have the right to request reasonable accommodations to participate in

the informal hearing process. The PHA is obligated to provide such reasonable accommodation unless doing so would result in a fundamental alteration in the natur e of the PHA's program.

If requested by the applicant, a PHA must consider verifiable mitigating circumstances that explain and/or overcome any prior misconduct related to a previous tenancy. If a reasonable accommodation would allow an applicant with a disability to meet the eligibility requirements for housing, a housing provider must provide the requested accommodation.

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require the PHA to reduce or waive essential eligibility or residency requirements. Examples of reasonable accommodations include, but are not limited to: physical alteration of units; making services and programs currently located in an inaccessible location in an alternate, accessible location; and revising the PHA's policies and procedures. The PHA should focus on finding a reasonable accommodation that will permit the applicant with a disability to comply with the essential obligations of tenancy. A PHA is n ot required to excuse the applicant from meeting those requirements. The PHA should provide all applicants with information regarding the PHA's Reasonable Accommodation Policy and Procedures at the time they apply for admission and at every annual re -certification. Each PHA must have a reasonable accommodation policy. The PHA's respo nsibility to provide reasonable accommodations for applicants and residents is present at all times, including during lease enforcement. See discussion in Section I.B.(7).

7. Unit Size. In public housing, a family with a disability may need a unit that is larger than the PHA's permitted occupancy standards. It is unlawful to fail to provide a reasonable accommodation which denies such a family the opportunity to apply f or and obtain a larger unit if the disability of the family member requires this type of accommodation.

8. Unit Location. In public housing, a family applying for a unit or requesting a transfer may need a first floor unit due to a disability.

   Note: Persons with disabilities cannot be required to occupy first floor units in elevator buildings, or in non-elevator buildings if the person is able to and wishes to use stairs.

9. Pets: Regular PHA pet policies do not apply to animals that are used to assis t persons with disabilities and are necessary as a reasonable accommodation. [An "assistance animal" is an animal that is needed as a reasonable accommodation for persons with disabilities. An assistance animal is not considered a "pet" and thus, is not subject to the PHA's pet policy. Assistance animals are animals that work, provide assistance , perform tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person' s disability.] *See* regulation published on October 27, 2009, 24 CFR Part V, Pet Ownership for the Elderly and Persons with Disabilities, Final Rule.

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with a disability.

Assistance animals are exempt from a PHA's "pet" restrictions or a PHA's policy requiring pet deposits or monthly pet fees. However, all reasonable lease provisions relating to health and safety apply to assistance/service animals such as maintaining the premises in a clean and sanitary condition and ensuring that neighbors enjoy their premises in a safe and peaceful manner.

H. VISITABILITY

1. Visitability Concept. Although not a requirement, it is recommended that all design, construction and alterations incorporate, whenever practical and economical, the concept of visitability in addition to the requirements under Section 504, the Architectural Barriers Act, Title II of the Americans with Disabilities Act and the Fair Housing Act.

   Visitability is a design concept, for very little or no additional cost, that enhances the ability of persons with disabilities to interact with their neighbors, friends and associates in the community. *See* www.huduser.org/publications/pubasst/strategies.html.

2. Design Considerations. Visitability design incorporates the following in all new construction or alterations, in addition to other requirements mandated by the accessibility laws discussed in this Notice, whenever practical, for as many units as possible within a development:

   a. Provide at least one entrance grade (no steps) approached by an accessible route such as a sidewalk; and
   b. Provide an entrance door, and all interior passage doors, that are at least 2 feet 10 inches wide allowing 32 inches of clear passage space.

3. Benefits of Visitability. Visitability also expands the availability of housing options for individuals who may not require full accessibility. It will assist PHAs in making reasonable accommodations and reduce, in some cases, the need for transfers when individuals become disabled in place. Visitability will also improve the marketability of units.

I. ACCESSIBILITY FUNDING SOURCES

PHA Capital Fund, PHA operating budgets, PHA operating reserves, PHA Housing Choice Voucher administrative fees and administrative fee reserves, State or local Community Development Block Grant funds, State and local HOME Program funds, Corporate donations, non-profit contributions from organizations such as Rotary Clubs, Lions Clubs, sororities/fraternities, etc., subject to applicable program requirements.

For further information about this Notice, contact the nearest HUD Office of Public Housing within your State. Locations of these offices are available on HUD's website at http://www.hud.gov/.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention of: Section 8 Public Housing Agencies; HUD Office of Public Housing Directors; Section 8 Financial Management Center

Notice PIH 2011-28 (HA)

Issued: May 27, 2011

Expires: Effective until amended, superseded, or rescinded

Cross References:
PIH 2009-44 (HA)
PIH 2008-43 (HA)
PIH 2005-9 (HA)
PIH 2006-32 (HA)

Subject: Cost- Savings Measures in the Housing Choice Voucher (HCV) Program

1. Purpose. This notice extends and revises Notice PIH 2009-44 which provided: (1) guidance on actions public housing agencies (PHA) may take to address financial shortfalls by reducing costs in the HCV program; and (2) information on the circumstances under which a PHA may deny a move under 24 CFR § 982.314(e)(1) or terminate a housing assistance payments (HAP) contract under 24 CFR §982.454 as a result of insufficient funding. The revisions to Notice PIH 2009-44 are bolded.

2. Background. Every year HUD receives annual appropriations from Congress. HUD implements the Appropriations Act and obligates funds to PHAs in accordance with the formula required by the Appropriations Act. PHAs must manage and monitor their programs within the amounts allocated for the calendar year (CY) to ensure that costs remain within appropriated amounts (including unspent funds from prior years, i.e., the Net Restricted Assets – HAP Equity Account (NRA)).

Specifically, PHAs monitor monthly per unit HAP costs, the number of leased units and attrition rates. If it appears that a PHA will have insufficient funds to support families through the end of the CY, then cost-savings measures may be taken. In determining which actions to take, a PHA should carefully consider the impact such actions will have on program applicants and participants. **HUD shall provide support and guidance as needed to assist the PHA in making sound cost-savings determinations. PHAs should contact their local field offices for such assistance.**

In any given fiscal or calendar year a PHA is not required or expected to lease up to its authorized baseline units contracted under a Consolidated Annual Contributions Contract (CACC) if it does not have the funding to do so. Under the Section Eight Management Assessment Program (SEMAP) the score for the lease-up indicator is determined by taking the higher of the percent of the units leased or the percent of allocated budget

authority expended. There is no penalty for not maximizing the percentage of baseline units leased if the PHA does not have sufficient funding to do so (see 24 CFR § 985.3(n)(2)(ii)). Note, however, that since PHA administrative fees are based on the number of authorized units under HAP, PHAs that lease a greater number of their authorized vouchers receive more administrative fees.

3. PHA Plan Requirements. Any cost-savings measures referenced in this notice that constitute a significant amendment or modification as defined in 24 CFR § 903.7(r)(2) are subject to the requirements of §§ 903.13, 903.15 and 903.17, which include a public hearing and comment period. **However, not all cost-savings measures constitute a significant amendment; that determination must be made by the PHA**.

4. PHA Actions to Reduce HCV Program Costs. Some of the actions noted below relate to program compliance issues (e.g., ensuring rents are reasonable, incomes are verified correctly, and utility allowances are accurate). Although PHAs must comply with such requirements, regardless of whether the PHA is experiencing financial difficulties, this notice serves as a reminder of more proactive steps PHAs may take within the context of these requirements to better manage HAP expenses.

Cost-savings measures are optional and have varying degrees of impact on applicant and participant families. The impact of each action should be considered prior to implementation. If an action adversely impacts program participants, particularly a family's rent burden, **HUD strongly recommends that the PHA first consider taking** other actions having no impact or less impact on families, including the use of administrative fee reserves to pay for HAP expenses.

The following is a non-exclusive list of PHA cost-savings actions.

a. Family Income Matching/Verification and Other Anti-Fraud Efforts. PHAs should accelerate efforts concerning income matching and income verification. PHAs **s**hould notify families that enforcement action could be taken where underreporting of income is discovered. **Also, the PHA may want to consider which actions should lead to a repayment agreement and which should lead to termination – particularly where a family may have intentionally misrepresented its income. PHAs may also take action to collect money owed after the family has been terminated from the program.**

b. Ensuring Reasonable Rents. PHAs do not have to wait until the HAP contract anniversary date to review owner rents and reduce them if warranted. The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units in accordance with the regulation at 24 CFR § 982.507(b) and the HAP contract. The PHA should ensure that owner rents do not exceed amounts charged for unassisted units in the same building or complex. The initial rent and all rent increases must comply with any State or local rent control limits. Further, any owner leasing promotions for unassisted tenants (e.g., the initial two months of

occupancy are "rent free") must be taken into consideration in determining rent reasonableness. **In regard to reasonable rents for certain types of federally subsidized projects, please reference Notice PIH 2011-1.**

In accordance with the HAP contract, the PHA must provide written notice to owners before reducing unreasonable rents. Rents may be reduced as early as the first of the following month. If the rent to owner is not reasonable as most recently determined by the PHA, the owner must reduce the rent to the reasonable amount or the HAP contract must be terminated. In such cases, the family will be issued a HCV to find a new unit. (Movers, like new participants, are subject to a PHA's current payment and occupancy standards.)

Even if an owner's rent is reasonable, a PHA could request owners to voluntarily agree to a temporary rent reduction or defer rent increases to help the PHA avoid the termination of HAP contracts due to shortfalls in HCV funding. It is the owner's option to agree to such measures. **However, a PHA may not "freeze" rents due to insufficient funding when an owner requests an increase, if the PHA determines the increased rent to be reasonable, and the owner does not agree to defer a rent increase.**

c. **Ensuring Accurate Utility Allowances**. The PHA may always review its utility allowances more than annually to determine if they are too high. Changes in utility allowances may be implemented immediately, but not later than the next regularly scheduled reexamination of family income. **Please note that in accordance with 24 CFR § 982.517(c), a utility allowance category must only be changed if there is an increase of ten percent or more in the utility rate since the last time the utility allowance schedule was revised.**

d. **Portability Absorption**. **A receiving PHA can always immediately stop absorbing new portable families and elect to bill the initial PHA as a cost-savings measure.** An initial PHA may also request that a receiving PHA absorb portable families for which the initial PHA is being billed. This may include the receiving PHA retroactively absorbing families for which the initial PHA was already billed and made payments. In these cases, the receiving PHA reimburses the initial PHA for payments made back to the effective date of the absorption, **but only for the current calendar year**. Both the receiving PHA and initial PHAs must agree to this arrangement. **Please reference section 10 of Notice PIH 2011-3.**

A receiving PHA cannot "absorb" a family into its HCV program until it executes a HAP contract on behalf of the family that moves to a new unit. PHAs may not engage in sham or fake portability paperwork exercises in an attempt to address their utilization or leasing problems. If the family is not placed under a HAP contract for a new unit in the receiving PHA's jurisdiction, the receiving PHA cannot absorb the family.

e. **<u>Portability and Moves within the PHA Jurisdiction</u>**. The HCV program regulations at 24 CFR § 982.314(e)(1) provide that the PHA may deny a family permission to move if the PHA does not have sufficient funding for continued assistance. **However, PHAs must notify their local HUD field office before denying moves due to insufficient funding.** Denial of requests to move under this regulation may cover both portability moves to a higher cost area as well as moves within the PHA jurisdiction to higher cost units.

In order to deny a move, the PHA must determine and demonstrate that based on the current funding available, it has insufficient funds to pay for higher subsidy amounts without having to terminate assistance of current program participants during the current CY. In projecting whether there is sufficient funding available for the remainder of the CY, the PHA may use reasonable estimates to factor in conditions such as pending rent increases and attrition rates for families leaving the program. If this insufficient funding condition exists, the PHA does not need a regulatory waiver from HUD to deny a request to move.

In determining if the PHA has sufficient funding available to approve a move, the PHA **must** take into consideration its available budget authority (including any available NRA).

A PHA may only deny a move where the requested move is voluntary (i.e., the family elects to move but is not required to move because of unaddressed Housing Quality Standards (HQS) violations, owner re-occupancy of the unit, etc.). A PHA may not deny a move under 24 CFR § 982.314(e)(1) if the move would reduce the family's subsidy cost to the PHA (e.g., a family wished to move under portability to a lower cost area). A PHA may not deny a move to a higher cost area or unit as a cost-savings measure in order to admit additional families from its waiting list into the HCV program, regardless of whether the PHA has unit months available to do so.

A higher cost area is defined as an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or more generous subsidy standards (e.g., the receiving PHA issues a 3-bedroom voucher to a family that received a 2-bedroom voucher from the initial PHA). In the case of portability moves, the PHA needs to contact the receiving PHA before denying the move to confirm that the receiving PHA (a) will not absorb the family and (b) that the HAP costs would be higher. If the receiving PHA is willing to absorb the family, there are no grounds to deny the portability move under 24 CFR § 982.314(e) (1).

f. **<u>Interim Reexaminations</u>**. The PHA could **revise its current polices, if necessary, to** require families to report all increases in income between reexaminations and conduct more frequent interim income reviews for families

reporting no income. The effective date of an annual or interim reexamination of family income is dependent upon PHA policies.

g. **Minimum Rent**. The PHA may increase the minimum rent to $50. The effective date for the increased minimum rent is dependent upon PHA policy. A PHA could institute a policy for increases in family contribution to be effective immediately, rather than at the next annual reexamination.

h. **Voucher Issuance**. The PHA may stop issuing turnover vouchers to new applicants and consider pulling back outstanding vouchers for applicants searching for housing that have not yet resulted in an executed HAP contract.

i. **Subsidy Standards**. The PHA may revise subsidy standards that exceed minimum HUD requirements to reduce bedroom size eligibility in accordance with 24 CFR § 982.402. Subsidy standards must be consistent with the HQS space requirements in 24 CFR § 982.401(d). PHAs are reminded that under 24 CFR § 982.401(d)(2)(ii), a dwelling unit must have at least one bedroom or living sleeping area for each two persons. Children of the opposite sex, other than the very young, may not be required to occupy the same bedroom or living/sleeping room.

If a family leases a unit larger than the unit size on the voucher, the PHA must ensure that the payment standard used to calculate the tenant share is based on the lower of the voucher unit size for which the family is eligible or the actual unit size leased. If the family size is reduced after admission, the PHA must ensure that the correct payment standard is used in calculating the family rent portion. An "empty nester" single individual (or any household with similarly reduced member size) living in a 3-bedroom unit should have a 0- or 1-bedroom payment standard, not a 3-bedroom payment standard. If the unit size for which the family is eligible changes during the term of the HAP contract, the new unit size is applicable at the first regular reexamination following the change in accordance with 24 CFR § 982.505(c)(5).

j. **Payment Standards**. A PHA may opt to lower payment standards for all or some unit sizes. In the tenant-based HCV program, a lower payment standard applies immediately to all new admissions, all movers, and families remaining in their units with a new HAP contract (e.g., when the owner offers or requires a new lease). For all other HCV participants, decreased payment standard amounts are not applied until the second regular reexamination after the payment standard is lowered (see 24 CFR § 982.505(c)(3)). The delayed applicability of a lower payment standard is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request a regulatory waiver for good cause so that reduced payment standards may be applied immediately with notice to the family in accordance with its administrative plan policies.

PHA waiver requests should, at a minimum, include the calculation used to arrive at the projected shortfall in funding and cost-savings measures the PHA has

already taken or will take in the future.

PHA requests for approval of payment standards below 90 percent of the published fair market rent (FMR) for any unit size may be approved by HUD field offices. However, 24 CFR § 982.503(d) states that HUD will not approve such payment standard amounts if the family share for more than 40 percent of voucher participants exceeds 30 percent of monthly adjusted income. This is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request that HUD Headquarters waive this requirement for good cause, such as the inability of a PHA to avoid terminating the HAP contracts of current participants or withdrawing vouchers from families searching for housing without the proposed reduction in payment standards.

In determining whether to approve PHA requests for payment standard waivers of 24 CFR § 982.503(d) or § 982.505(c)(3), HUD will review and take into consideration the PHA's current rent burden and the impact of the proposed change on the PHA's participants. In addition, as a condition of the waiver approval, HUD may require the PHA to raise payment standards and apply the new payment standard amounts immediately at such time that the PHA receives additional funding.

PHAs should note that they are not required to increase (or decrease) the dollar amount of their payment standards based on changes in applicable FMRs that take effect each Federal Fiscal Year on October 1st unless the change in FMR results in the PHA's payment standard being outside the basic range of 90 – 110 percent of FMR by bedroom size. A PHA that anticipates that any of its current payment standards will be below 90 percent of the new final FMRs and that does not wish to increase its payment standard for that bedroom size **must** request a waiver in advance per the procedure in the prior paragraph.

k. Utility Allowances. According to 24 CFR § 982.517(d)(1), the PHA must use the appropriate utility allowance for the size of dwelling unit actually leased by the family rather than the family unit size as determined under the PHA subsidy standards. A PHA may request a waiver of this regulation to apply the utility allowances for the bedroom size for which the family was eligible under the PHA's subsidy standards, rather than for the unit size the family is leasing if it is larger. However, if more than one cost-savings waiver is requested, the PHA must demonstrate how both/all waivers are necessary to avoid a shortfall that would result in the termination of families.

5. Termination of Assistance Due to Insufficient Funding. The regulation at 24 CFR § 982.454 provides that a PHA may terminate HAP contracts, in accordance with HUD requirements, if the PHA determines that funding under the CACC is insufficient to support continued assistance for families in the program.

In determining if funding under the CACC is insufficient to support continued assistance for families in the program, the PHA must take into consideration **all of** its available

budget authority (which includes unspent prior year HAP funds in the PHA's NRA account).

Before terminating HAP contracts on the basis of insufficient funding, the PHA must ensure that it has carefully considered all cost-savings measures and the impact such terminations will likely have on program applicants and participants. In addition, the PHA is encouraged to utilize alternative sources of unrestricted non-Federal funding that may be available to prevent the termination of rental assistance. **The PHA must notify the HUD field office and its financial analyst at the Financial Management Center (FMC) prior to issuing notices of termination actions due to insufficient funding. The notice must be in writing and must include all measures taken to date to reduce or eliminate the shortfall and the number and date(s) of proposed termination.**

PHA termination policies due to insufficient funding must be included in the administrative plan. Such policies should describe how the PHA will determine which HAP contracts will be terminated. Any PHA policies with respect to the resumption of assistance for the impacted families must also be included in the administrative plan. In setting such policies, a PHA should be mindful of its obligation to affirmatively further fair housing pursuant to 24 CFR 982.53(c) and 24 CFR 903.7 (o).

6. Reasonable Accommodations. Notwithstanding a PHA's adoption of policies noted above to deny portability or moves within a PHA's jurisdiction or revision of payment or subsidy standards, reasonable accommodation requests for a person's disability must still be evaluated in accordance with HUD's Section 504 implementing regulations at 24 CFR part 8. Such requests must be granted when an accommodation may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling, unless it would impose an undue financial and administrative burden on the PHA or fundamentally alter the nature of the PHA's operations.

7. PHA Requests for Regulatory Waivers. The regulatory waiver process in Public and Indian Housing requires PHAs to first send their request to the appropriate field office; the field office the forwards the waiver request to the appropriate program office at HUD Headquarters along with a field office recommendation (See Notice PIH 2009-41).

8. Further Information. Any questions regarding this notice should be directed to Phyllis Smelkinson, Housing Program Specialist, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138 (this is not a toll-free number) or by electronic mail at Phyllis.A.Smelkinson@hud.gov. **Persons with hearing or speech impairments may access this telephone number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.** In addition, PHAs that are experiencing funding difficulties, or that believe they may experience funding difficulties in the future, should contact their Financial Analyst at the FMC.

9. Paperwork Reduction Act. The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The information collection contained in this notice has been approved under the PRA OMB Control Number 2577-0169.

/s/

Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 203, 236, 400, 570, 574, 882, 891, and 982

[Docket No. FR 5359–F–02]

RIN 2501–AD49

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Through this final rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. This rule follows a January 24, 2011, proposed rule, which noted evidence suggesting that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from housing opportunities in the private sector. Such information was of special concern to HUD, which, as the Nation's housing agency, has the unique charge to promote the federal goal of providing decent housing and a suitable living environment for all. It is important not only that HUD ensure that its own programs do not involve discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but that its policies and programs serve as models for equal housing opportunity.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Carroll, Director, Fair Housing Assistance Program Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5206, Washington, DC 20410–8000; telephone number (202) 708–2333 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—the January 24, 2011, Proposed Rule

HUD published a proposed rule on January 24, 2011 (76 FR 4194), which advised of evidence suggesting that LGBT individuals and families do not have equal access to housing. Such information concerned HUD because HUD is charged with promoting the federal goal of providing decent housing and a suitable living environment for all.[1] In the January 24, 2011, proposed rule, HUD noted that many state and local governments share the concern over equal housing opportunity for LGBT individuals and families. Twenty states, the District of Columbia, and over 200 localities have enacted laws prohibiting discrimination in housing on the basis of sexual orientation or gender identity.[2]

As the Nation's housing agency, it is important not only that HUD ensure that its own programs do not involve arbitrary discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but that its policies and programs serve as models for equal housing opportunity. In July 2010, HUD issued guidance to assist LGBT individuals and families facing housing discrimination. (See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination*.) In addition to the guidance, HUD initiated this rulemaking in January 2011 in an effort to ensure that HUD's rental housing and homeownership programs remain open to all eligible persons regardless of sexual orientation, gender identity, or marital status.

HUD's January 24, 2011, rule proposed to amend 24 CFR 5.100 to include definitions of ''sexual orientation'' and ''gender identity'' among the definitions generally applicable to HUD programs. Under the proposed rule, 24 CFR 5.100 would define ''sexual orientation'' as ''homosexuality, heterosexuality, or bisexuality,'' a definition that the Office of Personnel Management (OPM) uses in the context of the federal workforce in its publication ''Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights.'' (See *www.opm.gov/er/address.pdf* at page 4.) The January 24, 2011, rule proposed to define ''gender identity'' as ''actual or perceived gender-related characteristics,'' consistent with the definition of ''gender identity'' in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Public Law 111–84, Division E, Section 4707(c)(4) (18 U.S.C. 249(c)(4)).

To promote equal access to HUD's housing programs without regard to sexual orientation or gender identity, in the January 2011 rule, HUD proposed to prohibit inquiries regarding sexual orientation or gender identity. As proposed, the prohibition precludes owners and operators of HUD-assisted housing or housing whose financing is insured by HUD from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied. In the January 2011 rule, HUD proposed to institute this policy in its rental assistance and homeownership programs, which include HUD's Federal Housing Administration (FHA) mortgage insurance programs, community development programs, and public and assisted housing programs.[3] While the January 2011 rule proposed to prohibit inquiries regarding sexual orientation or gender identity, nothing in the rule proposed to prohibit any individual from voluntarily self-identifying his or her own sexual orientation or gender identity. Additionally, the January 2011 rule did not propose to prohibit otherwise lawful inquiries of an applicant or occupant's sex where the housing involves the sharing of sleeping areas or bathrooms. This prohibition of inquiries regarding sexual orientation or gender identity was proposed to be provided in a new paragraph (a)(2) to 24 CFR 5.105.

Additionally, the January 24, 2011, proposed rule clarified in the regulations governing HUD's housing programs that all otherwise eligible families, regardless of sexual orientation, gender identity, or marital status have the opportunity to participate in HUD programs. As noted in the January 2011 proposed rule, the majority of HUD's rental housing and homeownership programs already interpret the term ''family'' broadly. The proposed rule clarified that families, who are otherwise eligible for HUD programs, may not be excluded because one or more members of the family may be LGBT or perceived to be LGBT.

Finally, the rule proposed to revise 24 CFR 203.33(b), by adding sexual orientation and gender identity to the characteristics that an FHA lender may not take into consideration in determining the adequacy of a mortgagor's income. Marital status is already a prohibited consideration under the current version of 24 CFR 203.33(b).

[1] This goal is rooted in section 2 of the Housing Act of 1949, 42 U.S.C. 1441.

[2] See, *e.g.,* Laws Prohibiting Discrimination Based on Sexual Orientation and Gender Identity, Institute of Real Estate Management (IREM) Legislative Staff, July 2007, which is available at *www.irem.org/pdfs/publicpolicy/Anti-discrimination.pdf*; see also *http://www.hrc.org/files/assets/resources/Housing_Laws_and_Policies.pdf*.

[3] Institution of this policy in HUD's Native American programs will be undertaken by separate rulemaking.

II. Changes Made at the Final Rule Stage

In response to public comment and upon further consideration by HUD of the issues presented in this rulemaking, HUD makes the following changes at this final rule stage:

• New § 5.105(a)(2) is revised to make explicit that eligibility determinations for HUD-assisted or -insured housing must be made without regard to actual or perceived sexual orientation, gender identity, or marital status. Also, new § 5.105(a)(2) is revised by dividing this paragraph into two sections. Section 5.105(a)(2)(i) will affirmatively state that housing assisted or insured by HUD must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. New § 5.105(a)(2)(ii) includes the prohibition of inquiries regarding sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available and further allows inquiries related to an applicant or occupant's sex for the limited purpose of determining placement in temporary, emergency shelters with shared bedrooms or bathrooms, or for determining the number of bedrooms to which a household may be entitled.

• The term ''family'' in § 5.403 is slightly reorganized in the opening clause to read as follows: ''Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status * * *.'' This reorganization makes explicit that perceived, as well as actual, sexual orientation, gender identity, and marital status cannot be factors for determining eligibility for HUD-assisted housing or FHA-insured housing.

• The term ''family'' in 24 CFR 574.3 of the program regulations for the Housing Opportunities for Persons With AIDS (HOPWA) program is slightly revised to reinsert a clause in the definition of ''family'' in the codified HOPWA regulations that was inadvertently omitted at the proposed rule stage. As stated below in the discussion of public comments, the insertion of this clause serves to combine the original meaning of ''family'' as provided in the HOPWA regulations with the meaning given the term ''family'' in 24 CFR 5.403, as revised by this rule.

• The regulations for HUD's Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities programs are revised to provide a cross-reference to ''family'' in 24 CFR 5.403, as revised by this rule.

There is one issue of significant comment for which HUD is not making a change at the final rule stage. This pertains to development and implementation of a national system that reports the sexual orientation and gender identity of beneficiaries of HUD housing programs, to allow HUD to better understand the extent to which HUD programs are serving LGBT persons. HUD is not making the requested change to the rule because HUD needs more time to consider the feasibility of such a system and the issues it raises; foremost among them being maintaining the privacy rights of the individual who would be the subject of such reporting. However, in response to comments highlighting the beneficial uses of data on LGBT individuals seeking assistance under HUD programs, and in deference to other government agencies that do collect such data, HUD is clarifying that the prohibition on inquiries is not intended to prohibit mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity solely for compliance with data collection requirements of state or local governments or other federal assistance programs.

With respect to permissible inquiries as to sex where the accommodations provided to an individual involve shared sleeping or bathing areas, HUD clarifies that the lawful inquiries as to sex would be permitted primarily for emergency shelters and like facilities. This temporary housing, unlike other HUD subsidized housing and unlike housing insured by the FHA, involves no application process to obtain housing, but rather involves immediate provision of temporary, short-term shelter for homeless individuals.

III. Public Comments Submitted on Proposed Rule and HUD's Responses

A. Overview of Public Comments

The public comment period for the proposed rule closed on March 25, 2011. At the close of the public comment period, approximately 376 public comments were received from a variety of commenters, including individuals, advocacy groups, legal aid offices, tenant and fair housing organizations, realtors and their representatives, law school clinics, public housing authorities, local government officials, and members of Congress. The overwhelming majority of comments were supportive of the rule. Some commenters, while supporting the rule, suggested modifications, and a minority of the commenters opposed the rule.

Commenters supporting the rule stated that it was long overdue and noted that HUD, as the Nation's housing agency, should lead the efforts to prevent discrimination against LGBT persons in housing. The commenters supportive of the rule all pointed to the importance of equal housing opportunity for LGBT persons.

Commenters opposing the rule stated that of the many important topics that should be addressed in the housing area, this is not one of them. One commenter viewed the rule as excessive government regulation. Other commenters opined that the rule will cause owners of multifamily housing to decline to participate in the Housing Choice Voucher program. A minority of commenters opposing the rule expressed concern that HUD's proposal will create an unsuitable housing environment.

In proceeding with this final rule, HUD expresses its disagreement with the commenters opposing the rule. HUD believes that the concerns they have voiced will not be realized in practice.

B. Significant Public Comments and HUD's Responses

This section presents significant issues raised by commenters and HUD's responses to these comments.

Terminology Changes

Several commenters recommended some changes to the terms proposed to be included in 24 CFR part 5, including for ''family,'' ''gender identity,'' and ''sexual orientation.'' Commenters also proposed adding definitions of ''child,'' ''marital status,'' and ''sex.''

Family. For the convenience of the reader and the discussion to follow, the term ''family'' proposed to be included in 24 CFR 5.403 is restated below:

Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(a) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

(b) An elderly family;

(c) A near-elderly family;

(d) A disabled family;

(e) A displaced family; and

(f) The remaining member of a tenant family.

Comment: One commenter proposed expanding the definition of ''family'' to include any person or persons, regardless of their sex or relationship to one another, with the only restriction being to allow at least one, but no more than two, persons per bedroom.

Response: HUD believes the term ''family,'' as presented in 24 CFR 5.403, addresses the concern of the commenter. With respect to bedroom size, the existing occupancy requirements of HUD's public and assisted housing programs already address the number of persons who may occupy one bedroom.

Comment: Other commenters suggested that it is important that the term ''family'' in HUD's rule prevent from exclusion family members who may identify as LGBT individuals or who have LGBT relationships, or who may be perceived as such.

Response: HUD submits that the term ''family,'' as provided in 24 CFR 5.403, and as proposed to be slightly revised by this final rule, prevents such arbitrary exclusion.

Comment: Commenters suggested that the rule include in 24 CFR 982.201(c), a Public and Indian Housing program regulation permitting public housing agencies (PHAs) to determine who qualifies as a family, an explicit statement that PHAs do not have discretion to define family groupings in a way that excludes LGBT persons, and that a PHA's discretion cannot conflict with 24 CFR 5.403. To accomplish this, a commenter recommended adding to 24 CFR 982.201(c) the phrase ''regardless of marital status, sexual orientation, or gender identity.''

Response: HUD maintains that amendment of 24 CFR 982.201(c) is not required. The rule already proposes an amendment to 24 CFR 982.4 requiring that PHA determinations regarding family be consistent with 24 CFR 5.403. PHAs submit administrative plans to HUD. These administrative plans must include family definitions that are at least as inclusive as HUD's definition. This requirement has generally proven an effective means of ensuring compliance with HUD eligibility requirements for beneficiaries of its public housing programs. If this approach is not effective following implementation of this rule, HUD will revisit the issue.

Comment: A commenter requested that HUD ensure that the term ''family'' as presented in 24 CFR 5.403 not have an adverse impact on Housing Opportunities for Persons With AIDS (HOPWA) recipients. The commenter stated that HOPWA regulations are intended to ensure that AIDS patients can structure their living situations broadly, according to their health needs.

Response: At this final rule stage, HUD makes a slight change to the definition of the term ''family'' in 24 CFR 574.3, the definition section of the HOPWA program regulations, to reinsert in the definition of ''family'' the clause ''who are determined to be important to their care or well-being.'' This clause was inadvertently omitted in the proposed rule. Through insertion of this clause, the final rule combines the definition of family in the proposed 24 CFR 5.403 with the other elements of the original term ''family'' in 24 CFR 574.3.

Comment: Commenters stated that the definition for disabled households may be read to exclude same-sex couples. They suggested that HUD amend the definition of disabled households to add an additional cross-reference to the term ''family'' in 24 CFR 5.403 to capture ''regardless of marital status, sexual orientation, or gender identity.''

Response: HUD's regulations for the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities programs, codified in 24 CFR part 891, include broad definitions of ''elderly family'' and ''disabled household.'' Nevertheless, similar to the approach that HUD took with the HOPWA definition of the term ''family,'' HUD is adding to the regulations in 24 CFR part 891 a cross-reference to the term ''family'' in 24 CFR 5.403. The cross-reference to ''family'' in 24 CFR 5.403 will supplement the meanings already provided to ''family'' in 24 CFR part 891.

Comment: Commenters suggested that the term ''family'' could be made more inclusive by moving the phrase ''actual or perceived'' to explicitly include marital status, and clarifying who qualifies as a ''child,'' as many LGBT parents lack the ability to create legal relationships with their children.

Response: In response to the commenters' concern and as noted in Section II of this preamble, the final rule restates the term ''family'' to provide in relevant part, as follows: ''Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status * * *.'' However, with respect to the second request, who qualifies as a child has not arisen as an issue in determining eligibility for housing. Accordingly, HUD will not add a definition of ''child'' to the final rule.

Comment: A commenter asked whether a family can be one individual.

Response: Yes, in accordance with section 3(b)(3)(A) of the U.S. Housing Act of 1937, HUD's longstanding definition of ''family'' has always included a single person.

Comment: A commenter stated that the term ''family'' as provided in 24 CFR 5.403 of the proposed rule fails to give a ''definite meaning to family'' and leaves the door open for program abuse by allowing any group that wants to live together to call itself a family. Another commenter stated that the proposed regulation, with its expansion of the term ''family,'' could potentially allow any combination of persons to qualify as a family without the requirement of a legally recognized relationship. Another commenter stated that the term ''family'' as proposed in the January 2011 rule will make it impossible for the PHA to determine the family composition, the family income, or who is on the lease, as families could change on a weekly basis. The commenter submitted that the proposed change will take away the security and stability of the family, as well as the PHA's power to determine if a tenant is suitable or whether the tenant's behavior would have an adverse effect on other residents.

Response: As discussed in this rulemaking, in both the proposed and final rules, ''family'' in HUD programs had broad meaning long before these regulatory amendments. By way of this rule, HUD is merely affirming that an eligible family may not be excluded because of actual or perceived sexual orientation, gender identity, or marital status. This rule's clarification of the term ''family'' has no impact on other program eligibility requirements, such as income qualification, annual certification, or the requirement that all family members are named on the household lease. The rule in no way precludes a PHA from consistently applying its otherwise lawful policies to a family consisting of LGBT members, just as it would a family with no LGBT members.

Gender Identity. For the convenience of the reader and the discussion to follow, the term ''gender identity'' in proposed 24 CFR 5.403 is restated below:

Gender identity means actual or perceived gender-related characteristics.

Comment: One commenter stated that the term ''gender-related characteristics'' is ambiguous and that this ambiguity could result in discriminatory application of the rule. The commenter called for a more precise definition for ''gender identity,'' but did not offer suggested language.

Another commenter was concerned that it would be very difficult to predict how the term ''gender identity,'' as defined in the statute, would actually be applied. Another commenter expressed similar concern that the rule does not address how ''actual or perceived gender-related characteristics'' would be interpreted in a given case, and recommended incorporation of an express reasonableness standard. The commenter stated that a reasonableness standard ''will require claimants to meet a strenuous standard for relief, without placing them in the dubious position of having to produce proof that is most readily available to potential defendants.''

A commenter suggested replacing the term ''gender identity'' with the more comprehensive ''gender identity or expression.'' Another commenter also stated that the definition of ''gender identity'' should include gender-related expression, to better protect transgender individuals from discrimination.

Another commenter stated that ''without more, 'actual or perceived gender-related characteristics' could be interpreted to be limited to those characteristics traditionally associated with the individual's sex at birth.'' The commenter further stated, ''To pre-empt any suggestion that HUD condones this view,'' HUD should amend the language to read: ''Gender identity means actual or perceived gender related characteristics, whether or not those characteristics are stereotypically associated with the person's designated sex at birth.'' This commenter stated that the definition mirrors language currently adopted by a number of states and municipalities. Another commenter endorsed the definition suggested by the preceding commenter.

Response: HUD appreciates the suggested revisions to the definition of ''gender identity'' offered by the commenters, and will consider these suggested revisions further. However, HUD declines to make changes to this term at this final rule stage. The number of suggested revisions to the definition highlights the differing views among the commenters regarding the meaning of this term. Given this, HUD believes that any changes to the definition should be the subject of further public comment before HUD submits the term as the established definition under which HUD programs will operate. The definition of ''gender identity'' that is being established by this rule is based on the definition of ''gender identity'' in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. 249(c)(4). This federal statute was enacted in 2009 to protect LGBT individuals from targeted violence. Passage of the law resulted from the ongoing efforts of individuals personally impacted by hate crime violence, together with nearly 300 civil rights and religious organizations, education groups, and civic associations committed to gaining legal protections for members of the LGBT community. In addition, the bill received support from many major law enforcement organizations, including the International Association of Chiefs of Police, the National District Attorneys Association, the National Sheriffs Association, the Police Executive Research Forum, and 31 state Attorneys General. Congress considered the issue over multiple sessions through public hearings, reports, and floor debates. The purpose of HUD's rule, as with the Hate Crimes Prevention Act, is to provide greater protection for LGBT persons. Accordingly, HUD believes it appropriate to use the same definition of ''gender identity'' as applies in the Hate Crimes Prevention Act. HUD seeks to experience how this term works in its programs before determining what, if any, changes are needed for its effective application in the housing context. Commenters should note, however, that since the definition is intended to cover actual or perceived gender-related characteristics of all persons, including transgender persons, HUD will interpret it to include those gender-related characteristics not stereotypically associated with a person's designated sex at birth.

Sexual Orientation. For the convenience of the reader and the discussion to follow, the term ''sexual orientation'' in proposed 24 CFR 5.403 is restated below:

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

Comment: A commenter claimed that defining sexual orientation as ''homosexuality, heterosexuality, or bisexuality'' alone excludes many people. Another commenter stated that HUD should ''broaden the definition of ''sexual orientation'' to ''homosexuality, heterosexuality, bisexuality, or *sexuality as defined by the individual''* [emphasis added by commenter].

Other commenters stated that HUD could add the word ''including'' prior to the list in the proposed definition of ''sexual orientation'' to clarify that the list is not exhaustive. The commenters stated that, as written, the definition ''excludes transgender individuals who self-identify as multi-gendered or between genders.'' Still other commenters stated that the fluidity of the term sexual orientation must be considered in light of transgender individuals. One of the commenters stated that the term sexual orientation should specifically include transgender individuals, due to uncertainty about whether general ''sexual orientation'' language would protect such individuals and in light of the historical treatment of such individuals.

Another commenter stated that the rule should broaden protections for ''sexual orientation'' to include persons who self-identify as heterosexuals but who have histories of same-sex relationships. Such histories could be an issue in small communities, in particular. The commenter states that protection for persons who identify as bisexuals would not be sufficient to cover this situation.

Response: As with commenters' suggested revisions to the definition of ''gender identity,'' HUD appreciates the suggested revisions to the definition of ''sexual orientation'' offered by commenters, but for the same reasons as provided in the preceding response, HUD declines to make changes at this final rule stage. The definition of ''sexual orientation,'' which HUD provided in the proposed rule, is based in federal policy—the Office of Personnel Management (OPM) ''Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights.'' (See *http://www.opm.gov/er/address.pdf* at page 4.) The purpose of the OPM publication is to implement the Federal Government's commitment to equal employment opportunity for LGBT individuals in the federal civil service. The OPM publication serves a goal analogous to the one served by HUD's proposed rule, and, as with the definition of ''gender identity,'' HUD seeks to experience how this term will work in practice before making changes to a definition currently established in federal policy.

HUD notes that its rule covers actual or perceived sexual orientation, as well as gender identity. As such, the rule covers most of the situations presented by the commenters, such as identifying as transgender; being perceived as transgender, multi-gendered, or between genders; or having a history of same-sex relationships. No one definition in the rule need cover every situation.

Marital Status.

Comment: One commenter recommended adding a definition of ''marital status'' that would define this term as ''the state of being unmarried, married, or separated, as defined by applicable state law. The term 'unmarried' includes persons who are single, divorced, or widowed.''

Response: The term ''marital status'' is not currently defined in HUD regulations and HUD does not find that the focus of this rule calls for a definition of ''marital status.''

Sex.

Comment: One commenter stated that to foreclose the possibility of using the allowed inquiry into sex in 24 CFR 5.105(a)(2) against transgender individuals, the rule should either: (a) Define ''sex'' broadly as ''the state of being or becoming male or female or transsexual;'' or (b) substitute the more inclusive term ''gender'' for ''sex,'' and define ''gender'' as ''sex, including a person's gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.''

Response: HUD declines to define ''sex'' or to substitute ''gender identity'' for ''sex'' in HUD programs. HUD recognizes the difficulty that transgender persons have faced in finding adequate emergency shelter. HUD does not, however, believe that it is necessary to define ''sex'' as the commenter suggests. The rule makes clear that housing must be available without regard to actual or perceived gender identity and prohibits inquiries concerning such. Inquiries as to sex are permitted only when determining eligibility for a temporary, emergency shelter that is limited to one sex because it has shared sleeping areas and/or bathrooms, or to determine the number of bedrooms to which a household may be entitled. Such inquiries are not permitted in any other homeless shelter or housing. In light of the narrow breadth of the exception and the regulation's overall purpose, HUD anticipates that transgender individuals will have greater access to shelters and other housing and will monitor its programs so as to ascertain whether additional guidance may be necessary.

Rule Should More Directly Prohibit Discrimination

Several commenters requested that HUD more directly prohibit discrimination. One commenter stated that ''a different section of the proposed regulation completely prohibits a mortgagee from taking into account the sexual orientation or gender identity of an individual in determining whether to provide a mortgage to that person. Amending the proposed regulation to completely ban housing discrimination towards individuals based on their sexual orientation or gender identity * * * would (1) be more consistent with the complete prohibition on using sexual orientation or gender identity in determining an individual's adequacy for a mortgage and would (2) provide greater protection to LGBT individuals from housing discrimination.''

Other commenters agreed, stating that the rule could provide stronger protection by completely prohibiting ''discrimination based on sexual orientation or gender identity toward occupants of or applicants for HUD-assisted housing (or housing with financing insured by HUD),'' rather than by prohibiting certain inquiries. The commenters stated that there are ways other than direct inquiry that LGBT individuals could be identified or discriminated against.

Still other commenters expressed concern that people who are gender-nonconforming may be perceived as gay or lesbian without any inquiry into their sexual orientation and that most discrimination against LGBT persons occurs not because a person answered an inquiry about sexual orientation or gender identity, but because of assumptions about a person's gender identity or sexual orientation. Those commenters proposed adding language that clearly prevents discrimination on the basis of real or perceived sexual orientation or gender identity.

One commenter suggested that proposed 24 CFR 5.105(a) be revised to cite 18 U.S.C. 249, the Hate Crimes Prevention Act, ''for the inference that Congress intends to discourage animus against others based on their sexual orientation, and therefore HUD will similarly disallow animus against others based on their sexual orientation.'' Another commenter also referenced the Hate Crimes Prevention Act, stating that HUD's rule falls short of the goals of that Act. The commenter stated that a rule prohibiting inquiries will have little effect on those who discriminate based on their unverified perceptions.

Response: HUD believes that the revision made to § 5.105(a)(2), as discussed in Section II of this preamble, addresses the commenters' concern.

Interpret the Fair Housing Act To Cover Discrimination Based on Sexual Orientation or Gender Identity

One commenter suggested that HUD interpret ''discriminatory practice'' in the Fair Housing Act to include discrimination against persons on the basis of sexual orientation or gender identity.

Response: In order to ensure equal access for all eligible families to HUD programs, this rule requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status. These additional program requirements do not, however, create additional protected classes in existing civil rights laws such as the federal Fair Housing Act. The Fair Housing Act prohibits discrimination based on race, color, national origin, religion, sex, disability, and familial status. Sexual orientation and gender identity are not identified as protected classes in the Fair Housing Act. As discussed in the following section, however, the Fair Housing Act's prohibition of discrimination on the basis of sex prohibits discrimination against LGBT persons in certain circumstances, such as those involving nonconformity with gender stereotypes.

Interpret Sex Discrimination Under the Fair Housing Act To Reach Discrimination and Harassment of LGBT Persons

A commenter stated that proposed 24 CFR 5.403, prohibiting inquiries of ''actual or perceived sexual orientation,'' could be revised to prohibit inquiries of ''actual or perceived sex.'' The commenter stated that sex is already a protected class under the Civil Rights Act of 1964 and could be used to reach discrimination against LGBT persons.

Response: HUD declines to revise the proposed rule to prohibit inquiries of sex, but notes that certain complaints from LGBT persons would be covered by the Fair Housing Act. If an LGBT person experiences any of the forms of discrimination enumerated in the Fair Housing Act, such as race or sex discrimination, that person can invoke the protections of the Fair Housing Act to remedy that discrimination. Discrimination based on sex under the Fair Housing Act includes discrimination because of nonconformity with gender stereotypes. For example, if a PHA denies a voucher to a person because the person does not conform to gender stereotypes, that person may file a Fair Housing Act complaint with HUD alleging sex discrimination.

HUD may also have jurisdiction to process a complaint filed under the Fair Housing Act if an LGBT person obtains housing but then experiences discrimination in the form of sexual harassment. Sexual harassment is illegal under the Fair Housing Act if the conduct is motivated by sex and is either so severe or pervasive that it creates a hostile environment or the provision of housing or its benefits is conditioned on the receipt of sexual favors (for example, as a *quid pro quo*). Harassment may be motivated by sex if, for example, it is due to the landlord's view that the tenant's appearance or

mannerisms fail to conform with stereotypical expectations of how a man or woman should look or act. Housing owners or operators may be liable for their own actions or the actions of their employees or other residents.

If HUD determines that it does not have jurisdiction to investigate a complaint from an LGBT person, the person may still be protected under state and local laws that include sexual orientation or gender identity as protected classes.

Expand the Rule's Protection To Cover Discrimination Beyond Refusal To Rent

A commenter recommended expanding the proposed rule to prohibit harassment and disparate treatment on the basis of sexual orientation or gender identity. The commenter explained that in order for the proposed rule to maximize its effectiveness, owners and operators of HUD-assisted housing or housing whose financing is insured by HUD should be precluded from negative decisionmaking based on these protected categories. HUD should be clear about its power to enforce nondiscrimination and the remedies available to individuals who have been discriminated against.

Another commenter suggested that the prohibition on inquiries be strengthened so that no information about a person's sexual orientation or gender identity can be used to deny a tenancy, harass a tenant, evict a tenant, or terminate a voucher.

Yet other commenters recognized the intent behind prohibiting inquiries regarding sexual orientation or gender identity, but submitted that the prohibition will not adequately protect LGBT persons from harassment in housing, as much housing discrimination occurs when a housing provider infers a person's sexual orientation or gender identity based on stereotypes, appearances, mannerisms, or information from a third party. The commenters urged HUD to adopt a final rule that prohibits discrimination based on sexual orientation and gender identity in all HUD-assisted and HUD-insured housing.

Response: HUD believes the revision made to § 5.105(a)(2), as discussed in Section II of this preamble, addresses the commenters' concern. In order to ensure equal access for all eligible families to HUD programs, § 5.105(a)(2) requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status.

Prohibition on Inquiries

Several commenters suggested changes to the prohibition on inquiries in proposed 24 CFR 5.105(a)(2). The proposed rule provided as follows:

> No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation, or gender identity of an applicant for, or occupant of, a HUD-assisted dwelling or a dwelling whose financing is insured by HUD, whether renter- or owner-occupied. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying the individual's sexual orientation or gender identity.

Comment: A commenter stated that the prohibition on inquiries may discourage open dialogue when determining appropriate placement of families applying for HUD programs. Inquiries regarding sexual orientation or gender identity may be appropriate where the safety of the individual or family being placed is of concern. There also may be other nondiscriminatory reasons for a person responsible for program placement to inquire about an individual's sexual orientation or gender identity. This commenter states that ''the language [should] be changed to simply include 'actual and perceived sexual orientation and gender identity' in the section for nondiscrimination; or that the prohibition on inquiries [should be] limited to discriminatory purposes.''

Response: Revised § 5.105(a)(2) addresses the commenters' nondiscrimination concerns. In addition, the prohibition on inquiries regarding sexual orientation or gender identity does not prevent individuals from volunteering to identify their sexual orientation or gender identity. They may choose to do so to address any safety concerns or for other placement-related issues, for example. Also, the commenter's concern is one that prompted HUD to include in the proposed rule its language on the permissibility of lawful inquiries as to sex, which is discussed below. However, as noted in the discussion of Section II of this preamble, and addressed in revised § 5.105(a)(2), the inquiries permissible in determining program eligibility are contemplated generally only where temporary, emergency shelter is provided to homeless individuals that involves the sharing of sleeping areas or bathrooms, or for a determination of the number of bedrooms to which a household may be entitled.

Lawful Inquiries of Sex

Several commenters requested clarification of the rule's lawful inquiry provision or expressed concern that the provision would allow for discrimination. The lawful inquiry provision provided by the proposed rule stated as follows:

> [The] prohibition on inquiries regarding sexual orientation or gender identity does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual involves the sharing of sleeping areas or bathrooms.

Comment: A commenter stated that the lawful inquiry exception for the sharing of sleeping areas or bathrooms may exacerbate extant stereotypes about gays and lesbians living in close quarters with heterosexuals. The commenter stated that numerous scenarios come to mind where landlords abuse this exception to refuse to rent to homosexuals, purportedly because heterosexuals feel uncomfortable ''sharing bathrooms or living space'' with homosexuals. The only legitimate purpose of such an exception, the commenter stated, would be in single-sex housing situations. But even there, the commenter stated, the inquiry is ''entirely irrelevant and inappropriate'' as to transgender status, because the person would have already acquired a new gender.

A commenter stated that the assumption that one person's sexual orientation might disturb the rights of another person in a setting where bathrooms and bedrooms would be shared reinforces stereotypes and biases, rather than countering them. Another commenter made a similar comment, stating that the proposal continues to promote negative stereotypes and violence against LGBT persons. A commenter speculated that while such language was placed in the proposal with the intention of ensuring that other tenants remain comfortable and safe, there are several issues with that goal, the first of which is whether ''leaving so much up to the discretion of the landlord will lead to greater potential risk of danger for these tenants.''

Another commenter stated that this provision creates numerous problems in application. The commenter states that asking someone who identifies with the so-called ''opposite'' gender to identify their sex implies that their identification is not ''real'' or ''genuine,'' and that reinforces the very problems the regulation seeks to resolve. This commenter stated that as with sexual orientation, it is difficult to imagine how one's gender identity, even in a shared situation, would be a problem for

any other person, as few programs require individuals to share bedrooms with strangers.

Another commenter also expressed concern about the practical effect of allowing inquiries into the applicant's or occupant's sexual orientation or gender identity. The commenter stated that it is not clear from the proposed rule whether this language provides an exhaustive or merely illustrative list of scenarios under which it is appropriate to inquire about an individual's gender. The commenter claimed that if the language is merely illustrative, a housing provider will likely be authorized to make broad inquiries into an applicant's gender identity when any shared living space is anticipated. A commenter stated that this ''lawful inquiry'' into sex could be used to indirectly reach gender identity, for instance in the case of a transgender individual, and this allowed inquiry could be used to accomplish the kind of discrimination the rule is meant to prevent. Another commenter expressed concern about the impact unrestricted inquiries would have on low-income transgender people who cannot afford to access legal gender change petitions.

Response: The allowance of lawful inquiries of sex for housing that provides shared bathrooms or sleeping arrangements is not a license to exclude LGBT persons from HUD-assisted housing. HUD programs must be open and available to persons regardless of sexual orientation or gender identity. The allowance of the limited inquiry of sex provided in the proposed rule is intended to apply primarily in emergency shelters for homeless persons, to ensure privacy if the shelter consists of shared sleeping or bathing areas. HUD addressed the harassment issue earlier in this preamble.

Comment: A commenter noted that HUD had not proposed a definition of what is meant by the term ''housing provided * * * to the individual (that) involves the sharing of sleeping areas or bathrooms.'' The commenter stated that ''[t]here was presumably no intention to permit inquiry of any person applying to any development that had bathrooms in common space. Additionally, by not providing that the ''sharing'' reference applies only to persons who are not part of the same household,'' it would open the door to inquiries of all applicants for all housing that permits households of more than one individual.

Response: HUD believes that revised § 5.105(a)(2), in this final rule, expressly provides that LGBT status cannot be a basis for denying participation in a program funded or insured by HUD. Moreover, the inquiry permitted by the rule is not unrestricted. As provided in this final rule, HUD believes it is appropriate to make inquiries as to sex in temporary, emergency shelters that have shared bedrooms or bathrooms. This housing, unlike other HUD subsidized housing and housing insured by FHA, necessitates immediate provision of temporary shelter for homeless individuals.

Comment: Another commenter expressed concern that the proposed prohibition on inquiries concerning gender identity may adversely affect the assignment of households to appropriately sized housing. The commenter explained that many local programs determine housing size in part based on the gender of household members, because household members of different genders other than spouses are not required to share a bedroom. According to the commenter, sponsors may assign households to housing that is too small or too large based on members' genders, consuming unnecessary housing assistance resources. A commenter suggested that HUD clarify the existing exception or add another exception to the blanket prohibition against inquiries to permit the assignment of households to properly sized housing.

Response: With the clarification provided in this final rule that HUD intended to allow lawful inquiries to a limited sector of HUD-assisted programs, HUD does not believe the commenter's concerns will be realized.

Comment: A commenter expressed concern about the lawful inquiries provision in the rule because the commenter believed the provision would allow housing providers to inquire about someone's human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) status, and explained that gay men are often discriminated against when they are considered to have HIV/AIDS.

Response: Nothing in the lawful inquiries provision of this rule and no provision in HUD's existing regulations for its housing programs allows a housing provider to inquire about someone's HIV status, except where providing HIV/AIDS-related housing assistance and supportive services (*e.g.* activities under the HOPWA program (24 CFR part 574)), and subject to confidentiality requirements. Moreover, the federal Fair Housing Act, which HUD enforces and administers, prohibits discrimination against someone who has or is regarded as having a disability, including HIV/AIDS. (See 42 U.S.C. 3602(h)(3) and 3604(f)(1).)

Comment: Several commenters expressed concern that inquiries as to a person's ''sex'' in situations involving shared sleeping areas and bathrooms is not sufficiently clear to guard against discrimination based on gender identity and asked HUD to provide further guidance. One commenter stated that this exception for lawful inquiries ''leaves landlords with significant discretion to deny housing on illegitimate grounds.'' This same commenter stated that HUD ''should add language to more clearly confine this exception to its legitimate ends.'' Another commenter requested that HUD clarify what type of inquiries are acceptable and in what specific circumstances, so as not to allow this exception to become a pretext for discrimination based on gender identity.

Several commenters stated that the allowed inquiry into sex provided could be used to identify and target transgender individuals, in particular, because the term ''sex'' used in the rule is vague and because the ''lawful inquiries'' exception is too broadly defined, leaving landlords ''significant discretion to deny housing on illegitimate grounds.'' Some of these commenters thought the exception should be more narrowly defined.

One commenter stated that the proposed rule does not provide sufficient guidance to clarify for housing providers the limits of permissible inquiry into the applicant's sex, thus placing housing administrators in the position of arbiter of the transgender individual's sex for the purpose of their housing applications, and exposing transgender persons to harm and discrimination because of varying interpretations. Another commenter similarly stated that ''the exception for inquiries about sex for determining eligibility for single sex-dormitories or housing with single-sex shared-bathrooms might create opportunities for discrimination against transgender persons.'' The commenter asked HUD ''to establish strict limitations on when these questions are appropriate.''

A commenter stated that opponents of the rule will likely focus on the ''niche issue of the placement of transgender individuals (or those that are pretending to be transgender) in single sex facilities.'' The commenter stated that HUD, in the interest of addressing these critics and for clarity overall, ''should fully analyze this question instead of merely stating that the rule is 'not intended to prohibit otherwise lawful inquiries''' of sex, which is vague. The commenter asked, as an example, ''[c]an a battered women's shelter still receive funding from HUD if it denies shelter to

a man, who perceives himself to be a woman? What would be the adjudicatory process in such an event? Is this event a realistic scenario? HUD should further analyze issues such as these both to undercut critics' arguments that the proposed rule would be unworkable and to better guide its local program coordinators in proper practices. The overarching goal of this proposed rule change is too important for it to be scrapped because of this rare and currently murky legal scenario.''

Another commenter stated that a transgender person's actual sex may be at odds with his or her appearance, and questioned the meaning of this provision for such a person. A commenter asked if transgender persons may be excluded from shared housing or gay men excluded from sharing housing with other men. If so, would other accommodations be made for excluded groups? Other commenters urged HUD to clarify the rule to state that a housing provider may only inquire about individuals' gender identity for the purpose of placing them in gender-specific accommodations, but cannot inquire about a person's birth sex, anatomy, or medical history.

Response: In Section II of this preamble, HUD has already addressed several of the concerns raised by the commenters. HUD is committed to further review of this issue and, as necessary, will issue guidance that, through examples, elaborates on how the prohibition of inquiries on sexual orientation and gender identity, and the allowance for lawful inquiries as to sex, will work in practice.

Comment: Several commenters suggested that HUD-funded programs should accept an individual's gender identity, as opposed to ''sex'' in determining housing placement in sex-segregated housing programs. One commenter stated that lawful inquiries of a consumer's ''sex'' where housing involves the sharing of sleeping areas and bathrooms leave transgender individuals, who may need the most protection, particularly vulnerable to discrimination. Another commenter stated that even inquiries of individuals who have obtained legal gender change documents would lead to harassment and discrimination. For this reason, the commenter suggested that inquiries about sex for sex-specific housing should be made in reference to an individual's gender identity.

Another commenter stated that if applicants are not allowed to report their gender identity rather than their sex as legally defined by their state government, the considerable differences among states as to how persons may change their sex would lead to a considerable lack of uniformity across HUD programs. The commenter further stated that transgender persons may be arbitrarily excluded from HUD programs if they are forced to report their sex as defined by their state government, instead of being permitted to report a gender identity that more accurately describes them. Several commenters expressing similar concerns recommended that the rule be revised so that a person is required only to disclose the gender they identify as regardless of sex assigned at birth and not be asked to provide proof of that identity.

Other commenters stated that the rule should allow for voluntary self-reporting where sex designations are required. In such cases, the commenter stated that ''HUD could allow applicants to list the sex designation they would like to have rather than their biological or as yet medically un-reassigned sex.'' The commenter stated that this would help to avoid the problem of using allowed inquiries regarding sex to get to issues of gender identity. Another commenter stated that it is important to ensure that persons are able to self-select their sex in order to protect the access of transgender persons to housing facilities. Another commenter, after querying how the ''lawful inquiries'' regarding sex will apply to transgender individuals, stated that ''in these instances, self-identification is probably the best way to go; however, this may be an area best left with some discretion.''

Response: HUD recognizes the serious problem of housing instability among transgender persons. The housing discrimination, harassment, and homelessness that transgender persons face are part of what precipitated HUD's rulemaking in this area. These issues also contributed to HUD's recent recognition that housing discrimination because of nonconformity with gender stereotypes may constitute sex discrimination under the Fair Housing Act. HUD is aware of the significant challenges that transgender persons face when attempting to access shelters. By way of this rule, however, HUD is not mandating a national policy related to appropriate placement of transgender persons in shelters limited to one sex. HUD needs additional time to review this issue and determine whether setting national policy is appropriate.

Comment: A commenter expressed concern about being required to identify the sex of tenants on the Form HUD–50059, given that the applicant/tenant is not asked to self-identify sex but rather the information is assigned by a third party based on observation. Form HUD–50059 is used to determine the number of bedrooms a family may need, based on the age and sex of the children. The commenter submitted that requiring information on sex to be reported on Form 50059 conflicts with the proposed rule prohibiting inquiries about sex, and suggested that individuals should self-identify their gender and sex.

Response: HUD will further examine this form, to determine whether a change is needed. The form is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which requires notice and comment when changes are made. Accordingly, any changes made to this form will provide the public the opportunity to comment, and such comment will not only be helpful in addressing the specific issues raised about this form, but may inform HUD on changes that may be needed to other forms.

Collect Data To Protect LGBT Community

Several commenters suggested that HUD establish a confidential data collection system to identify LGBT beneficiaries of HUD housing programs to ensure that their housing needs are met and that they are protected from discrimination.

Comment: Several commenters proposed that HUD provide a mechanism by which applicants and tenants of HUD-assisted housing or HUD-insured housing can voluntarily report their sexual orientation and gender identity. Such data would be collected for informational purposes only, and in a manner to protect the confidentiality of the responder.

Commenters identified varying need for such data. One commenter explained that data on the sexual orientation and gender identity of HUD program participants is crucial to demonstrate the need for affirmative outreach, assess its effect, and attract resources to address problems in this area. Other commenters stated that the data would be of substantial value for the development of appropriate programs and policies. One commenter specified that information on program participants' sexual orientation and gender identity can be useful to determine whether appropriate servicers are being delivered and to assess whether progress is being made in meeting the housing needs of LGBT youth and adults. Other commenters stated that data should be collected only to assess whether the rule is achieving its goals.

Commenters provided specific suggestions for safeguarding confidentiality. One commenter

proposed that inquiries should not be permitted until after admission decisions have been made, and another stated that only staff involved in the collection and analysis of the data should have access to it. Other commenters urged HUD to continue to work with fair housing organizations and the housing community to collect demographic information on the LGBT community in a way that cannot be used to discriminate, by including appropriate restrictions on the acquisition, retention, and use of the information to protect the privacy of those whose data is being collected. Several commenters discussed the effect of the proposed prohibition on inquiries on data collection. One commenter stated there are a myriad of potential mechanisms for achieving the dual goals of protection against discrimination while gathering sufficient data to monitor LGBT housing discrimination. The commenter proposed a voluntary reporting system that would allow persons who wish to self-identify to bypass housing providers and PHAs and submit demographic information directly to HUD. The commenter suggested that language be added to existing forms that would direct all applicants and occupants of HUD-assisted housing wishing to provide such information to a Web site and mailing address for HUD's Office of Fair Housing and Equal Opportunity. The commenter stated that this could enable the person to submit the information anonymously, while providing HUD with sufficient demographic information to monitor discrimination.

Another commenter also viewed voluntary disclosure as the appropriate balancing of the right to privacy ''against the rule's purpose in ensuring equal access to housing.'' But according to the commenter, ''[w]hile the rule proposal notes that the inquiry prohibition does nothing to limit voluntary disclosure, it also does nothing to channel such disclosures in a way that promotes the rule's underlying goal.''

One commenter recommended that HUD conform its data collection systems related to the sex of household members to the proposed prohibition of inquiries concerning gender identity. Another commenter stated that the prohibition on inquiries regarding gender identity could result in the inadvertent housing of dangerous individuals because, in the commenter's view, gender identity is an important component of the applicant information collected to gather accurate criminal background information. The commenter supported the establishment of a database containing gender identity information of applicants.

Response: For the reasons discussed in Section II of the preamble, HUD declines to include in this regulation a national reporting system of sexual orientation and gender identity. HUD understands the concerns of the commenters, but believes that further consideration must be given to this proposal. This final rule is not intended to prohibit mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity for compliance with data collection requirements of state and local governments or other federal assistance programs, but only after determining the individual's or family's eligibility for HUD assistance.

Comment: Commenters urged HUD to look for ways to collect and maintain data to help identify and combat LGBT housing discrimination, while protecting and preserving privacy and safety, and preventing further discrimination or retaliation so that additional policy efforts can be further developed. The commenters stated that because discrimination against LGBT individuals is substantially underreported, the final rule should contain language requiring covered housing providers and grantees to provide accessible information about these protections, as well as necessary information on how people can submit complaints when they believe their rights have been violated.

One commenter urged HUD to work with the LGBT community and fair housing organizations to collect demographic data on sexual orientation and gender identity to better enable the LGBT community to advocate for increased funding for geographic and programmatic areas where LGBT persons remain vulnerable. Another commenter stated that because sexual orientation and gender identity are still not identified in the Fair Housing Act as prohibited bases for discrimination, data must be collected to reflect the number of LGBT individuals and families seeking access to HUD programs and services to help advocate for necessary policy changes and to identify areas where LGBT persons remain particularly vulnerable to discrimination.

Response: HUD appreciates all the proposals submitted by the commenters. As discussed in Section II of the preamble, HUD declines to add a data collection mechanism to the rule. HUD notes, however, that it has existing mechanisms for collecting and reporting on discrimination claims filed with its Office of Fair Housing and Equal Opportunity. (See *http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination.*)

Enforcement Procedures

Comment: Several commenters noted that the proposed rule was not explicit as to how HUD plans to enforce the rule. One commenter stated that there must be a mechanism by which claims of discrimination in HUD programs can be voiced by the LGBT community. Another commenter echoed that concern, stating that if sexual orientation or gender identity discrimination does occur, it must be clear to the landlords and future tenants that these matters will be addressed in a fair and timely manner.

A commenter suggested that HUD include in the final rule a clear procedure for submitting complaints, holding hearings, and making determinations of violations of HUD program rules. Another commenter suggested including an appeals process. One commenter suggested that HUD create a centralized complaint system through which persons can submit information about discrimination under the rule. That commenter proposed that HUD establish a telephone number for complaints based on violations of the proposed rule, and that HUD designate a coordinator to direct complaints to the appropriate persons in the program offices. The commenter proposed that HUD create a complaint intake form similar to the existing Form HUD–903 that persons use to file complaints under the Fair Housing Act. The commenter stated that creating a centralized intake system would have the benefit of facilitating the filing of reports of discrimination, as well as providing more information about the occurrence of discrimination in HUD programs. The commenter stated that ''[p]ractical mechanisms for enforcement will allow LGBT families and advocates to fully utilize these changes to access housing.''

One commenter questioned whether HUD anticipates an expansion of its Investigations Division to support the proposed rule, and if so, what if any training the existing staff would undergo to adequately prepare for this type of investigation. Another commenter simply suggested that HUD consider expanding its investigative units to respond to the likely increase in complaints.

A commenter inquired whether the regulations create a new right for aggrieved parties. The commenter explained that while an aggrieved party can file a complaint alleging discrimination on grounds expressly

forbidden in the Fair Housing Act, the proposed rule does not seem to give victims of discrimination based on sexual orientation or gender identity the same right. The commenter requested clarification regarding what method of enforcement HUD will implement if it does not explicitly extend this right to victims of discrimination based on sexual orientation or gender identity. The commenter concluded that without zealous and informed enforcement, these regulations will provide only lip service to the broader goals of promoting access to HUD programs for all eligible families.

Response: As noted in response to an earlier comment, this rule creates additional program requirements to ensure equal access to HUD programs for all eligible families. Therefore, a violation of the program requirements established by this rule will be handled in the same manner that violations of other program requirements are handled. Each HUD program has in place mechanisms for addressing violations of program requirements. If a participant in HUD-assisted or HUD-insured housing programs believes that the housing provider is not complying with program requirements, the individual may complain to the appropriate HUD office that administers the program (*e.g.,* the Office of Public and Indian Housing, the Office of Community Planning and Development). In addition, as also noted in the earlier response to a comment, certain complaints would be covered by the Fair Housing Act. A claim of discrimination based on nonconformity with gender stereotypes may be investigated and enforced under the Fair Housing Act as sex discrimination. HUD recently published guidance on this. See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination*. Such claims would be filed through HUD's Office of Fair Housing and Equal Opportunity at the Web site noted earlier in this preamble: *http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination* or 1–(800) 669–9777. Many states and localities have laws prohibiting discrimination based on one's LGBT status. HUD's guidance, referenced above, contains a list of such states. As noted below, HUD will develop training materials to educate recipients of HUD funding of their rights and responsibilities under this rule.

Remedies

Other commenters recommended that HUD clearly explain its authority to provide remedies under the rule, whether it is to sanction, suspend, debar, or seek civil penalties against those individuals or entities who deny individuals and families safe, clean, affordable housing because of their gender identity or sexual orientation. The commenters believe that ''setting the rules in stone'' would deter housing providers from violating the terms of the rule.

Response: Whenever a participant in a HUD program fails or refuses to comply with regulatory requirements, such failure or refusal shall constitute a violation of the requirements under the program in which the participant is operating and the participant will be subject to all sanctions and penalties for violation of program requirements, as provided for under the applicable program, including the withholding of HUD assistance. In addition, as is discussed in the prior response, HUD may pursue an enforcement action when the Fair Housing Act is implicated. A housing provider who is found to have violated the Fair Housing Act may be liable for actual damages, injunctive and other equitable relief, civil penalties, and attorney's fees.

Education, Outreach, and Guidance

A commenter stated that HUD should add education requirements. The commenter stated that within 9 months after this regulation goes into effect, entities that participate in HUD programs should educate their relevant staff on the rule. An Internet-based training program could be efficiently used. This requirement could be waived in rural areas that currently lack Internet access, or an alternative means of satisfying the requirement could be created, such as participation via telephone. This commenter also stated that within 9 months, HUD should require participating entities to begin providing individuals with updated information regarding their rights to be free from discrimination. This commenter stated that given limited resources, HUD should focus its efforts on areas with large LGBT populations and in jurisdictions that do not currently possess anti-discrimination statutes that cover sexual orientation or gender identity.

Another commenter stated that whether this policy has its desired effect will greatly depend on outside factors. The anti-discrimination policies in place should be brought to the attention of applicants for HUD housing through HUD application forms, interviews, and Web site pages. HUD employees should be instructed as to the reasons for these policies and should be sanctioned for any behavior or comment that discriminates against individuals covered under HUD's policies. Employees who are sensitive to LGBT issues should be enlisted to provide information to assist LGBT individuals and their families in making decisions as to the most comfortable and safe housing. Another of the commenters stated that in order to ensure compliance with the proposed rule, it will be necessary to educate the affected agencies and programs on the meaning of ''*actual or perceived gender-related characteristics,''* a definition cited in the rule and drawn from the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009.

Another commenter recommended that HUD develop comprehensive outreach goals and advertise in the LGBT media. The commenter recommended that forms HUD–935.2(a) or (b) be amended for this purpose to include categories for gender identity and sexual orientation as target groups, and that such forms be available for all HUD-assisted programs. The commenter also suggested that PHAs affirmatively market to underrepresented populations as they are required to affirmatively market housing under the Fair Housing Act. Other commenters recommended that HUD-assisted housing providers be required to affirmatively market to the LGBT population through community centers and other outreach groups. One of these commenters stated that HUD program staff, PHAs, subsidized housing providers, and housing-related service providers will need education on the final rule to ensure that they are in compliance.

A commenter recommended that HUD conduct a public relations campaign that explains the new regulation and welcomes LGBT families. The commenter suggested that owners and operators of HUD-assisted housing and FHA-insured housing be aware of the proposed rule and its impact on their day-to-day dealings with tenants and mortgagors, while also suggesting that HUD create literature, posters, and other materials directed at LGBT families. The commenter stated that these advertisements should advise LGBT families that HUD wants to ensure their equal access to its core rental assistance and homeownership programs, while the media campaign should convey that HUD is committed to taking actions necessary to ensure that LGBT families are not excluded on the basis of their sexual orientation, gender identity, or other criteria irrelevant to the purpose of HUD.

Another commenter stated that if LGBT individuals do not know about

the proposed regulation, it will be much less effective. If enforcement of the proposed regulation largely depends on litigation by those who have been discriminated against, then those individuals must know that the discrimination that they faced was actually illegal. HUD should work with prominent LGBT organizations, as well as with nonprofits that deal with fair housing and with state and local governments to disseminate these proposed rules in a simple and easy-to-understand way.

A commenter specifically inquired about whether HUD's Fair Housing Enforcement Office would provide training on the implementation of the rule. Another commenter states that, in particular, HUD should: (1) Publicize the new regulation, (2) develop know-your-rights materials for LGBT individuals to promote the reporting of violations, and (3) provide mandatory trainings to owners and operators of HUD-assisted housing programs to encourage compliance.

Another commenter recommended that HUD issue clear guidelines that will ensure that LGBT tenants of single-sex housing will not be singled out for harassment or disparate treatment on the basis of their sexual orientation or gender identity. The commenter suggested that HUD owners and operators be given instructions on how to provide reasonable accommodations for LGBT families, including, where possible, mechanisms that provide privacy in public showers. The commenter stated that HUD staff, as well as HUD owners and operators, should be trained on the importance of safe housing for persons who self-identify as transgender.

Response: Without question, HUD plans to engage in education and outreach about this rule, and will consider many of the proposals offered by the commenters on how such education and outreach may be conducted.

Rule Should Wait for Completion of Study

Comment: A commenter expressed concern that HUD's proposed rule was published before HUD completed its study on housing discrimination based on sexual orientation and gender identity. The commenter suggested that HUD complete its study and consider the study's evidence in revising and finalizing the proposed rule rather than developing the regulation and conducting the study simultaneously.

Response: The study to which the commenter refers concerns the private sector and not HUD's programs. Accordingly, HUD does not find it necessary to wait for the completion of the study. It is HUD's desire to proactively address the possibility of discrimination against LGBT individuals and families in HUD's housing programs.

Rule Did Not Properly Address Federalism Concerns

Comment: A commenter stated that this rule fails to properly address federalism concerns because protecting LGBT persons from discrimination is a matter of state law, and while some states have chosen to enact such protections, other states have declined to do so. Another commenter stated that HUD is overstepping its authority by defining family in the proposed regulation. The commenter thought this could be construed as an infringement on states' rights because the Federal Government has primarily left it to the states to make determinations regarding the definition of family. Another commenter stated that HUD is violating Executive Order 13132 on federalism by regulating marriage and housing. According to the commenter, these are states' rights issues, as regulation of marriage and housing occur at a state level, notwithstanding that the Federal Government provides funding for housing.

Response: HUD's rule is not in violation of the executive order on federalism, Executive Order 13132, nor is it regulating marriage. HUD's rule only pertains to HUD's housing programs. There is no requirement for any multifamily housing owner to participate in HUD's programs or for any lender to become an FHA-approved lender. However, if these individuals or entities choose to participate, then they must abide by the program requirements established by HUD.

Rule Exceeds HUD's Legal Authority

Comment: A few commenters stated that this rule exceeds HUD's legal authority. The commenters stated that making ''sexual orientation'' and ''gender identity'' protected classifications for purposes of federal housing programs has no support in any act of Congress, and that forbidding such discrimination undermines the Defense of Marriage Act. The commenters stated that HUD should not create new protected classifications where there is no statutory policy undergirding it.

Response: The rule creates additional program requirements to ensure equal access of all eligible families to HUD programs, which is well within the scope of HUD's authority. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. This includes LGBT persons, who have faced difficulty in seeking housing. Excluding any eligible person from HUD-funded or HUD-insured housing because of that person's sexual orientation or gender identity contravenes HUD's responsibility under the Department of Housing and Urban Development Act to work to address ''the needs and interests of the Nation's communities and of the people who live and work in them.'' (See 42 U.S.C. 3531.) Congress has repeatedly charged the Department with serving the existing housing needs of all Americans, including in section 2 of the Housing Act of 1949, 42 U.S.C. 1441 (''The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require * * * the realization as soon as feasible the goal of a decent home and a suitable living environment for every American family * * *''); section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701t (''The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of 'a decent home and a suitable living environment for every American family'''); sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701–702 (''The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment. * * * The objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American by strengthening a nationwide partnership of public and private institutions able * * * to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness * * * [and] to improve housing opportunities for all residents of the United States''); and section 2(b) of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 note (''The purpose of this Act, therefore, is—(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing for all Americans.'')

Congress has given HUD broad authority to fulfill this mission and implement its responsibilities through rulemaking. Section 7(d) of the Department of Housing and Urban Development Act specifically states that

the Secretary ''may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.''

HUD does not agree that the Defense of Marriage Act, which relates to the definition of marriage, overrides the Department's responsibility to ensure that its programs are carried out free from discrimination. This rule does not define or otherwise regulate marriage. Rather, it seeks to make housing available to LGBT persons who might otherwise be denied access to HUD-funded or assisted housing.

Rule Creates Conflict With Religious Freedom

Comment: A commenter stated that the rule may force faith-based and other organizations, as a condition of participating in HUD programs and in contravention of their religious beliefs, to support shared housing arrangements between persons who are not joined in what the commenter referred to as ''the legal union of one man and woman.'' Another commenter explained that, while not insisting that any person should be denied housing, faith-based and other organizations should retain the freedom to make housing placements in a manner consistent with their religious beliefs. The commenter further stated that the rule, by infringing on religious freedom, may have the ultimate effect of driving away faith-based organizations with a long and successful track record in meeting housing needs. The commenter concluded that given their large role in serving unmet housing needs, it is imperative that such faith-based organizations not be required to compromise or violate their religious beliefs as a condition of participating in HUD-assisted housing programs and receiving government funds to carry out needed services.

Other commenters stated that protecting sexual orientation and gender identity without provisions for protecting rights of conscience and belief results in governmental discrimination favoring one version of morality and belief over another. The commenters stated that there are many individuals and faith-based organizations who have already been penalized for adherence to religious beliefs that will not permit them to support same-sex relationships.

Response: Faith-based organizations have long been involved in HUD programs and provide valuable services to low-income populations served by HUD. It is HUD's hope that faith-based organizations will continue to actively participate in HUD programs. However, the exclusion of an individual or family from HUD housing for no reason other than that the individual is LGBT or the family has one or more LGBT members is inconsistent with HUD's mission to ensure decent housing and a suitable living environment for all. Accordingly, it is incumbent on HUD to ensure that the regulations governing its housing programs make clear that such arbitrary exclusion will not be tolerated.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. A determination was made that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the rule is to ensure open access to HUD's core programs, regardless of sexual orientation or gender identity. In this rule, HUD affirms the broad meaning of ''family'' that is already provided for in HUD programs by statute. The only clarification that HUD makes is that a family is a family as currently provided in statute and regulation, regardless of marital status, sexual orientation, or gender identity. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development,

Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 236

Grant programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR parts 5, 200, 203, 236, 291, 570, 574, and 982, as follows:

Note: Remainder of notice omitted. For text of 24 CFR Parts 5 and 982, see CFR References section of this coursebook

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention of: Section 8 Public Housing Agencies; HUD Office of Public Housing Directors; Section 8 Financial Management Center

Notice: PIH 2012-15 (HA)

Issued: February 27, 2012

Expires: This notice remains in effect until amended, superseded, or rescinded

Subject: Streamlining Administrative Practices in the Housing Choice Voucher Program

1. Purpose. This Notice provides guidance on actions public housing agencies (PHAs) administering the Housing Choice Voucher (HCV) program may take to streamline administrative practices and reduce administrative costs.

2. Background. The statutory authority for administrative fees is found in section 8(q) of the United States Housing Act of 1937. However, in recent years, the appropriations acts have specified the formula by which HUD must calculate how administrative fees are calculated. Since 2008, the appropriations acts have directed HUD to calculate administrative fees based on the formula in section 8(q) prior to enactment of the Quality Housing and Work Responsibility Act of 1998 (and related appropriations acts). This formula uses the higher of the 1993 or 1994 two-bedroom Fair Market Rent. PHAs were paid 7.65 percent of that rent for the first 600 units under lease and 7.5 percent for the remaining units. These per unit rates are adjusted annually by local wage rate data.

Since 2008, Congress has not appropriated 100 percent of funding eligibility under the formula. Based on the amount of funding for administrative fees in H.R. 2112, Consolidated and Further Continuing Appropriations Act, 2012, enacted on November 18, 2011, the Department is expecting the proration to be approximately 75 percent for fiscal year 2012. The reduction in administrative fees makes it necessary for many PHAs to streamline their business practices and look for ways to reduce costs. This Notice provides guidance that PHAs may wish to consider in order to reduce administrative burdens and administrative costs.

PHA administrative fees must only be used for HCV program expenses. These include but are not limited to: (1) waiting list management and updates; (2) preference verifications; (3) eligibility determinations; (4) intake and briefings; (5) voucher issuances; (6) owner outreach efforts; (7) unit inspections; (8) rent negotiations and reasonableness determinations; (9) annual and interim income reexaminations; (10) tenant fraud investigations and hearings; (11) processing subsequent moves, including

portability moves outside the PHA jurisdiction; (12) the costs associated with making housing assistance payments to owners; and (13) monthly reporting in HUD systems (VMS, PIC, FASS, SEMAP).

3. PHA Actions to Reduce HCV Administrative Costs. The following cost-saving measures are optional and have varying degrees of impact on each PHA. The PHA should consider the impact of each action prior to implementation. PHAs must continue to comply with all program requirements, regardless of whether the PHA is experiencing financial difficulties, and regardless of what cost savings measures are taken. This is not intended to be an exhaustive list of PHA cost savings actions.

a. Use of Upfront Income Verification (UIV) Tools. UIV is the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals. The use of UIV tools can reduce the administrative time spent verifying income of participants because time-consuming third party verification methods can be avoided. UIV tools include but are not limited to the EIV System, the Work Number, and Advanced HR Solutions. PHAs should review Notice PIH 2010-19, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System, and further revisions or extensions for compliance with EIV requirements.

b. Verifying HQS Deficiencies Remotely for Annual or Interim Inspections. If the PHA determines that a unit does not meet the Housing Quality Standards (HQS) requirements during an annual or interim inspection, verification that the deficiencies are corrected may be done by means other than a re-inspection. The regulation at 24 CFR 982.404(a)(3) states that the PHA must verify the correction of deficiencies but does not prescribe a particular method. For example, a PHA might accept an owner's certification, a receipt from a vendor, a photo of the repair or tenant confirmation that required repairs are complete and then verify that action at the next on-site inspection. Further, a PHA might tie the verification process to the severity of corrections needed and/or its experience with the owner and property. PHAs must include in the PHA's Administrative Plan how the PHA will verify the correction of HQS deficiencies.

In the case of initial inspections, the PHA is required to conduct an actual follow-up on-site inspection if the unit does not pass HQS pursuant to the initial inspection. Additionally, in the case of project based vouchers, the PHA is required to conduct follow-up inspections to determine if the HQS deficiency is corrected pursuant to 24 CFR 983.103(e)(2). Please refer to Notice PIH 2011-29 for additional information related to HQS inspections.

c. Separating the Annual HQS Inspection from the Annual Reexamination of Income. Many PHAs time the annual HQS inspections to coincide with the tenant's annual reexamination of income. However, this is not a regulatory requirement and may not be the most efficient method of

completing annual HQS inspections. Separating these two functions may allow a PHA to schedule inspections based on geographic areas resulting in a more efficient use of staff time and a reduction in transportation costs.

PHAs should be aware that implementing this step would require the submission of an additional form HUD-50058, Family Report, into the PIC system. In accordance with Notice PIH 2010-25, Timely Reporting Requirements of the Family Report (form HUD-50058 and form HUD-50058 MTW), and any subsequent revisions, the Department has determined that reports must be submitted no later than 60 calendar days from the effective date of **any** action recorded on line 2b of the form HUD-50058 or form HUD-50058 MTW.

d. Eliminating Interim Reexaminations for Increases in Income. PHAs may wish to consider the administrative costs of processing interim increases in income compared to the reduction in HAP expenses. Although many PHAs conduct interim reexaminations for increases in participant's income, the regulations do not require this action. The regulations at 24 CFR 982.516 require a PHA to develop policies prescribing when and under what conditions the family must report a change in family income or composition. Therefore, a PHA may adopt policies that do not require families to report increases in income until the next annual reexamination.

PHAs should consider the impact on the PHA's HAP expenses before implementing such a policy. For example, a PHA might conduct an analysis of the previous year's interim reexaminations to determine the effect on HAP expenses before the PHA takes any action.

Another alternative is to implement a policy where the PHA only requires the family to report an increase in income above a set threshold. This policy would decrease the number of interim reexaminations that the PHA must conduct. This approach creates a balance between the staff resources required to conduct the interim reexamination and the reduction in HAP expenses for the PHA. For example, a PHA could require an increase of at least $5,000 in annual income before a family is required to report a change and the PHA conducts an interim reexamination.

PHAs are required to include in their Administrative Plan their policy on when an interim reexamination will be conducted. PHAs must conduct an interim reexamination if requested by the family due to a change in income or family composition.

e. Closing the Waiting List. If a PHA has sufficient applicants on its waiting list to house families for a reasonable period of time based on past leasing rates, the PHA may close the waiting list to reduce the administrative tasks associated with accepting and processing applications. The PHA must comply with the requirements established in 24 CFR 982.206 for opening and closing the waiting list.

f. **Eliminating Waiting List Preferences.** The establishment of local preferences for the selection of families admitted to the program is a PHA option. PHAs needing to reduce administrative burdens could elect to eliminate all local preferences and house families solely by the date and time of the application. This approach eliminates the staff time needed to verify the preferences and the on-going monitoring of the waiting list to ensure compliance with the preference system. The PHA would be required to amend the Administrative Plan to reflect the policy adopted.

g. **Conducting Group Briefing Sessions**. The regulations at 24 CFR 982.301 outline the requirements of a PHA briefing for families selected to participate in the tenant-based program. The regulations do not prohibit a PHA from conducting these briefings in a group setting. Many PHAs follow this approach and it significantly reduces the amount of time PHA staff spends on the voucher briefing and issuance process.

h. **Eliminating the Process of Screening Families for Tenant Suitability.** Screening families for suitability for tenancy is discretionary for PHAs as stated in 24 CFR 982.307. Owners are responsible for screening families on the basis of their tenancy history and may include factors such as: payment of rent and utility bills; caring for a unit and premises; respecting the rights of other residents to the peaceful enjoyment of their housing; drug related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and compliance with other essential conditions of tenancy. The PHA's Administrative Plan must state the policies on screening applicants for suitability.

The PHA must comply with the requirements outlined in 24 CFR 982.553, Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers, when determining eligibility for an applicant or participant.

i. **Absorbing Portability Vouchers**. In order to reduce the administrative task associated with portability billing arrangements, a PHA may absorb incoming portability families as long as they are financially able to do so. A receiving PHA cannot "absorb" a family into its HCV program until it executes a HAP contract on behalf of the family that moves to a new unit. PHAs may not engage in sham or fake portability paperwork exercises in an attempt to address their utilization or leasing problems. If the family is not placed under a HAP contract for a new unit in the receiving PHA's jurisdiction, the receiving PHA cannot absorb the family. PHAs should refer to Notice PIH 2011-3 for additional guidance on portability.

j. **Limiting Portability and Moves within the PHA Jurisdiction**. The HCV program regulations at 24 CFR § 982.314(c) allow PHAs to adopt policies that prohibit moves during the initial lease term and prohibit more than one move by the family during any one year period. A PHA may only deny a move where the requested move is voluntary. A PHA must not deny moves for a unit that does not pass HQS or for a family requesting assistance under

the Violence Against Women Act (VAWA). PHAs should refer to Notice PIH 2011-3 for additional guidance on portability.

k. <u>Streamlining the Reexamination Process.</u> PHAs should review their policies and procedures for conducting annual reexaminations of income to remove unnecessary steps. Removing unnecessary steps will reduce the amount of time spent on the annual reexamination process and allow staff to complete other responsibilities.

- The PHA should collect certain documents only at initial occupancy such as birth certificates and declarations of U.S. citizenship. However, HUD staff often sees multiple copies of these documents in tenant files because the PHA is collecting them unnecessarily at each annual reexamination.

- Notice PIH 2010-19, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System, page 4, which is extended by Notice PIH 2011-25, provides updated information regarding written third party verification that can reduce the administrative burden of verifying income. The Notice clarifies that Written Third Party Verification, (Level 4**),** can be an original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or PHA request date and that such documentation may be in the possession of the tenant (or applicant). In the past, written third party verification had to come directly from the source and could not be in the tenant's possession. It is the Department's position that such tenant-provided documents are written third party verification since these documents originated from a third party source. The PHA may, at its discretion, reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

  Examples of acceptable tenant-provided documentation (generated by a third party source) include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Current acceptable tenant-provided documents must be used for income and rent determinations. Please refer to Notice PIH 2010-19 for complete details.

- Notice PIH 2010-19, page 5, also makes an exception to obtaining third party verification for assets and expenses when: (1) the asset or expense to be verified is not a significant amount and would have minimum impact on the total tenant payment (TTP) **and** the PHA is able to verify the asset or expense through review of original documents provided by the tenant; or (2) an independent source does not have the capability of sending written third party verification directly to the PHA or does not facilitate oral third party verification; or (3) it is not cost effective or reasonable to obtain third party verification of assets and expenses.

l. **Consolidation of Administrative Tasks**. PHAs who are in the same geographical area may wish to consolidate administrative functions to reduce costs. For example, one agency may have a strong group of inspectors while another agency has a strong landlord relations staff. These agencies could divide tasks to optimize time and resources.

m. **Procurement of Supplies and Services**. PHAs could work together when procuring supplies and services to reduce cost. For example, training could be less expensive if more participants attended and the purchase of some items in bulk can cost less.

n. **Increase the Success rate of Voucher holders**. A higher success rate of families obtaining housing results in fewer vouchers that need to be issued to achieve the same leasing goal. A high success rate reduces a PHA's administrative burden by resulting in fewer briefing sessions, HQS inspections, rent reasonableness determinations etc. PHAs may wish to consider extending search times and re-assessing payment standard adequacy among other factors to improve success rates.

4. **PHA Actions to Optimize the Amount of Administrative Fees Received.** The following is a list of actions a PHA can take to increase the amount of Administrative Fees the program receives.

a. **Review Allocation of Program Expenses.** PHAs with more than one program (i.e., Public Housing and HCV) should review the allocation of program expenses to ensure they are accurate and reasonable. PHAs operating under Asset Management should also review the amount allocated to the Central Office Cost Center (COCC) and make adjustments where necessary.

b. **Maximize Leasing.** The administrative fee a PHA receives is based on the number of unit months leased (UML) on the first day of each month. Therefore, it is important for PHAs to maximize their leasing potential up to their base line units under the Annual Contributions Contract (ACC), when PHA funding levels can support it, in order to receive the full amount of administrative fees. HUD Field Offices have implemented procedures to assist PHAs with monitoring their spending and leasing rates and can provide assistance with ensuring optimal leasing rates.

c. **Fraud Recovery.** Where the PHA is the principal party initiating or sustaining an action to recover amounts from tenants that are due as a result of fraud and abuse, the PHA may retain, the greater of: (1) fifty percent of the amount actually collected from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement; or (2) reasonable and necessary costs that the PHA incurs related to the collection from a judgment, litigation (including settlement of lawsuit) or an

administrative repayment agreement. Reasonable and necessary costs include the costs of the investigation, legal fees and collection agency fees. If HUD incurs costs on behalf of the PHA in obtaining the judgment, these costs must be deducted from the amount to be retained by the PHA.

Since these funds must only be used to support the Section 8 program, they can provide added relief to an agency's administrative costs. Please refer to 24 CFR 792, Public Housing Agency and Section 8 Fraud Recoveries, for a full explanation of fraud recoveries.

5. PHA Plan Requirements. Any cost-savings measures referenced in this Notice that would result in a policy change that constitutes a significant amendment or modification as defined in 24 CFR 903.7(r)(2) are subject to the requirements of §§ 903.13, 903.15 , 903.17, and 903.21,which include a public hearing and comment period. **However, not all cost-savings measures constitute a significant amendment; the PHA must make that determination based on the PHA's definition of significant amendment as provided in their PHA plan.**

6. Further Information. Any questions regarding this Notice should be directed to the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 708-0477 (this is not a toll-free number).

7. Paperwork Reduction Act. The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The information collection contained in this Notice has been approved under the PRA OMB Control Number 2577-0169.

/s/
Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

6/11/12 PIH 2012-28; State Registered Lifetime Sex Offenders in Federally Assisted Housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

Office of Public and Indian Housing

Special Attention of:
Multifamily Hub Directors
Multifamily Program Center Directors
Supervisory Housing Project Managers
Project Managers
Resident Management Corporations;
Contract Administrators
Owners and Management Agents Administering
Multifamily Housing Rental Assistance Programs

Public Housing Agency Directors
Section 8 and Public Housing Administrators
HUD Directors of Public Housing
PIH Program Center Coordinators
Public Housing Division Directors

NOTICE: PIH 2012-28
NOTICE: H 2012-11

Issued: June 11, 2012
Expires: This notice remains in effect until amended, superseded, or rescinded

Supersedes: H 2009-11 and PIH 2009-35 (HA)

SUBJECT: State Registered Lifetime Sex Offenders in Federally Assisted Housing

I. PURPOSE

This guidance reiterates owners' and agents' (O/As) and Public Housing Agencies' (PHAs) statutory- and regulatory-based responsibilities to prohibit admission to individuals subject to a lifetime registration requirement under a State sex offender registration program. If a participant who is subject to such a lifetime registration requirement was erroneously admitted into a federal housing program identified under Section II, below, and is found to be receiving housing assistance, O/As and PHAs must pursue eviction or termination of assistance for these participants. In addition, this Notice clarifies regulations concerning admissions and strongly recommends additional steps to prevent individuals subject to a lifetime registration requirement under a State sex offender registration program from receiving federal housing assistance.

II. APPLICABILITY

Screening requirements for state registered lifetime sex offenders apply to O/As and PHAs administering the following rental assistance programs:

- Section 202 Project Rental Assistance Contracts (PRAC)
- Section 811 PRAC
- Section 811 Project Rental Assistance (PRA) demonstration

- Section 202/162 Project Assistance Contract (PAC)
- Section 202/8
- Section 202 Senior Preservation Rental Assistance Contracts (SPRACs)
- Section 8 Project-based
- Section 236
- Section 236 Rental Assistance Payment (RAP)
- Section 221(d)(3) Below Market Interest Rate (BMIR)
- Section 101 Rent Supplement
- Public Housing
- Tenant-based Housing Choice Voucher
- Project-based Certificate and Housing Choice Voucher
- Moderate Rehabilitation

III. BACKGROUND

The Office of Inspector General (OIG) conducted an audit of the Department of Housing and Urban Development's requirement prohibiting lifetime registered sex offenders from admission to HUD-subsidized housing. The result of this audit estimated that 2,094 to 3,046 assisted households included a lifetime registered sex offender as a household member. A copy of the Audit Report 2009-KC-0001, dated August 14, 2009, is located at: www.hudoig.gov/pdf/Internal/2009/ig0970001.pdf.

Although this estimate is small in relation to the total number of households assisted through HUD programs, the potential public safety concern remains paramount. It is critical to ensure that HUD-assisted housing comply with the law barring admission of lifetime registered sex offenders in order to maximize resident safety.

IV. STATUTORY AND REGULATORY CLARIFICATIONS

A. Mandatory Prohibition for Lifetime Sex Offenders- HUD regulations at 24 CFR § 5.856, § 960.204(a)(4), and § 982.553(a)(2) prohibit admission after June 25, 2001, if any member of a household is subject to a State lifetime sex offender registration requirement. This regulation reflects a statutory prohibition. A household receiving assistance with such a member is receiving assistance in violation of federal law.

O/As and PHAs must follow the guidelines outlined in paragraphs B and C below in order to ensure that no lifetime sex offenders are admitted into federally assisted housing. Furthermore, if an O/A or PHA discovers that a household member was erroneously admitted (the household member was subject to a lifetime registration requirement at admission and was admitted after June 25, 2001), the O/A or PHA must immediately pursue eviction or termination of assistance for the household member. Regulations for hearings for the Public Housing (PH) and Housing Choice Voucher (HCV) programs, at 24 CFR § 966 Subpart B and § 982.555, respectively, continue to apply.

If an O/A or PHA erroneously admitted a lifetime sex offender, the O/A or PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA or O/A must terminate assistance for the household.

For admissions before June 25, 2001, there is currently no HUD statutory or regulatory basis to evict or terminate the assistance of the household solely on the basis of a household member's sex offender registration status.

B. **Applicant Residential History** – Pursuant to 24 C.F.R. § 5.856 and § 5.905, O/As and PHAs must perform criminal background checks during the application stage to determine if an applicant, or a member of an applicant's household, is subject to a lifetime registration requirement under any State sex offender registration program. Criminal background checks must be performed in the state in which the housing is located and for states where the applicant and members of the applicant's household may have resided. **As such, applicants for admission into the applicable HUD-assisted housing programs must provide a complete list of all states in which any household member has resided.**[1] Failure to accurately respond to any question during the application process is cause to deny the family admission. **Additionally, PHAs and O/As must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime sex offender registration requirement in any state.** PHAs and O/As are reminded of their obligations with respect to Limited English Proficiency when processing applications of families for admission and at recertification. HUD's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) can be found in the Federal Register at 72 FR 2732 (January 22, 2007).

O/As and PHAs determine, in accordance with their screening standards, whether the applicant and the applicant's household members meet the screening criteria. If the processes described above reveal an applicant's household includes an individual subject to State lifetime sex offender registration, the O/As and PHAs must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHAs and O/As must deny admission to the family.

Before a PHA can deny admission to an applicant for PHA-administered programs covered in this Notice, the applicant must be notified of the right to dispute the accuracy and relevance of the criminal background check information (see § 960.204(c) and § 982.553(d)).

For other programs covered in this Notice, an O/A must provide a rejected

[1] Alternatively, if a PHA has access to a national database covering sex offender registries in all states, the PHA may use this in lieu of asking for a complete list of states on the application. The chosen method must be indicated in the PHA admissions and occupancy and/or administrative plans. This option is not available for O/As.

applicant with a written rejection notice in accordance with the requirements at Paragraph 4-9.C of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

C. Criminal Background Check Record Retention – PHAs must destroy the results of a criminal background check in accordance with the records management requirements in 24 C.F.R. §5.905(c); however, a record of the screening, including the type of screening and the date performed, must be retained.

O/As must retain the results of the search, along with the application, in accordance with the requirements at Paragraph 4-22 of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*

V. RECOMMENDED PROCEDURES

In addition to the above regulatory requirements, HUD recommends that O/As and PHAs adopt new procedures at admission and at annual recertification/reexamination to prevent lifetime registered sex offenders from receiving federal housing assistance.

A. Admission – O/As and PHAs should verify the criminal history information, provided by the applicant. For example, PHAs and O/As are encouraged to use the Dru Sjodin National Sex Offender Database, an online, searchable database hosted by the Department of Justice, which combines the data from individual state sex offender registries and/or other available national, state, or local resources. The Dru Sjodin National Sex Offender database is available at: http://www.nsopw.gov. O/As and PHAs should also explore the use of other available databases through their local law enforcement agencies.

In addition to screening adult members of the applicant's household, HUD recommends that criminal background screening include juvenile members of the applicant's household, to the extent allowed by state and local law.

B. Annual Recertification/Reexamination – HUD recommends that at annual recertification or reexamination, O/As and PHAs ask whether the tenant or any member of the tenant's household is subject to a State lifetime sex offender registration program in any state. O/As and PHAs should verify this information using the Dru Sjodin National Sex Offender Database and/or other official federal, state, and local resources and document this information in the same manner as at admission.

If the recertification screening reveals that the tenant has falsified information or otherwise failed to disclose criminal history on his/her application and/or recertification forms, the O/A or PHA should pursue eviction or termination of assistance, as described in section IV.a, above.

Notwithstanding the above, if the tenant or a member of the tenant's household, regardless of the date of admission, engages in criminal activity (including sex offenses) while living in HUD-assisted housing, the O/A or PHA should pursue eviction or termination of assistance to the extent allowed by HUD requirements, the lease, and state or local law.

VI. PAPERWORK REDUCTION ACT

The information collection requirements contained in this document have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1955 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0169, 2577-0083, and 2502-0178. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

VI. ADDITIONAL INFORMATION

Requirements for the prohibition of admission to applicants who are lifetime registered sex offenders and for obtaining criminal background checks are found at 24 C.F.R. Part 5, Subparts I and J; § 960.204(a)(4); § 982.553(a)(2); and in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

Questions regarding this Notice pertaining to the Office of Housing's programs may be directed to Mr. Zeljko Jovanovic at 202-402-3157 or Zeljko.Jovanovic@hud.gov. Questions pertaining to the Office of Public and Indian Housing's Housing Choice Voucher and Public Housing programs may be directed to Ms. Caroline Crouse at 202-402-4595 or Caroline.P.Crouse@hud.gov. **Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.**

/s/
Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner

/s/
Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PUBLIC AND INDIAN HOUSING

Special Attention of:
Regional Directors: State and Area Coordinators; Regional Economists; Public Housing HUB Directors; Public Housing Agencies

Notice PIH 2012-29

Issued: June 21, 2012

Expires: Effective until Amended, Superseded or Rescinded

Cross References:

Subject: Establishing the Passbook Savings Rate

1. Purpose.

This Notice clarifies program policy related to the passbook savings rate used to determine annual income from net family assets. Under 24 CFR §5.609(b)(3), when determining annual income for families who apply for or receive assistance in the Housing Choice Voucher (HCV) and public housing programs, a public housing agency (PHA) includes in annual income the greater of either: (1) actual income resulting from all net family assets; or (2) a percentage of the value of such assets based upon the current passbook savings rate as determined by the U.S. Department of Housing and Urban Development (HUD) when a family has net assets in excess of $5000. This Notice also minimizes the administrative burden on Field Offices and PHAs in conducting a survey of local banks, by relying on a rate that is publicly available and based upon recent market data.

2. Applicability.

This Notice applies to all PHAs and localities that operate a HCV program, public housing program, or Section 8 Moderate Rehabilitation program. Moving-To-Work (MTW) agencies, to the extent they have established an alternate policy in their MTW plan, are excluded from the provisions of this Notice.

3. Passbook Savings Rate.

This notice provides guidance to supplement information provided in the Form HUD-50058 Instruction Booklet, Public Housing Occupancy Guidebook, and the Housing Choice Voucher Program Guidebook on the passbook savings rate used to calculate imputed income from assets. The guidance in this notice supersedes any guidance included in the above referenced form and guidebooks.

Safe Harbor

The PHA may establish its own passbook rate that the PHA will apply in calculating imputed assets from income. The PHA should review its passbook rate at least annually to determine that it is within the safe harbor range. The PHA must apply its policy to calculate

imputed asset income consistently to all participants.

PHAs may establish a passbook rate within 75 basis points (plus or minus .75 percent) of the Savings National Rate in effect at the time the PHA establishes the passbook rate.[1] The passbook rate may not be less than 0 percent. The Savings National Rate is a simple average of rates by United States (US) depository institutions as calculated by the Federal Deposit Insurance Corporation (FDIC). The FDIC publishes this rate on a weekly basis. The PHA can access historical and current Savings National Rates at the following website: www.fdic.gov/regulations/resources/rates/.

Examples: If the published FDIC Savings National Rate at the time the PHA establishes its passbook rate is .12%. Acceptable passbook rate would fall in the range between 0% and 0.87%. If the published FDIC Savings National Rate at the time the PHA establishes its passbook rate is .92%. Acceptable passbook rate would fall in the range between 0.17% and 1.67%.

4. For Further Information.

For further information regarding this Notice, please contact Brian Gage, in the Office of Public Housing and Voucher Programs at 202-402-4254.

/s/

Sandra B. Henriquez
Assistant Secretary for Public and Indian Housing

[1] The 75 basis points threshold is consistent with interest rate restrictions applicable to less than well capitalized institutions under Part 337.6 of the FDIC Rules and Regulations.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PUBLIC AND INDIAN HOUSING

Special Attention of:	**NOTICE: PIH-2013-04 (HA)**
Public Housing Agencies; Public Housing Hub Office Directors; Public Housing Program Center Directors; Public Housing Division Directors; Regional Directors; Field Office Directors	Issued: 01/28/13 Expires: Effective until amended, superseded, or rescinded Cross References: 24 CFR 5.609(c) 24 CFR 960.259(a) 24 CFR 960.259(c) 24 CFR 982.516(a) 24 CFR 982.551(b)

Subject: Guidance on Verification of Excluded Income.

1. Purpose:

This notice provides clarification and guidance on the verification requirements of income excluded from the determination of annual income in accordance with 24 CFR 5.609(c).

2. Applicability:

This notice applies to the Public Housing, Housing Choice Voucher (including the project-based certificate and voucher), and Section 8 Moderate Rehabilitation programs.

3. Background:

In an effort to reduce administrative burdens on Public Housing Agencies (PHAs), HUD is providing guidance and clarification on the requirements to verify income that is excluded from the determination of annual income. There are two categories of excluded income: fully excluded and partially excluded. Each category has different verification requirements and Sections 4 and 5 of this notice provide details on how each is to be verified.

4. Fully Excluded Income:

Income that is fully excluded means the entire amount qualifies to be excluded from the annual income determination. For fully excluded income, the PHA is **not required** to:

- Verify the income in accordance with the HUD-prescribed verification hierarchy;
- Document in the tenant file why third party verification was not available as required by 24 CFR 960.259(c)(i) and 24 CFR 982.516(a)(2); and
- Report the income in Section 7 of the form HUD-50058.

PHAs may accept an applicant or participant's self-certification as verification of fully excluded income. The PHA's application and reexamination documentation, which is signed by all adult family members, may serve as the self-certification of the fully excluded income. PHAs have the option of elevating the verification requirements if necessary, to determine if a source of income qualifies for a full exclusion.

Examples of common fully excluded income categories that are verifiable through applicant or participant self-certification are:

- Supplemental Nutrition Assistance Program (SNAP) benefits, formerly known as food stamps.
- Income from a live-in aide.

For a complete list of income exclusions, see 24 CFR 5.609(c).

5. <u>Partially Excluded Income:</u>

Income that is partially excluded means that only a certain portion of the income reported by the family qualifies to be excluded, while the remainder must be included when determining the family's annual income. For partially excluded income, PHAs are required to:

- Comply with HUD-prescribed verification requirements and all applicable regulations pertaining to the determination of annual income; and
- Report the income in Section 7 of the form HUD-50058. The example below shows how the partially excluded income for a full-time student should be reported on the form HUD-50058.

7a. Family member name	No.	7b. Income Code	7c. Calculation (PHA use)	7d. Dollars per year	7e. Income exclusion	7f. Income after exclusions (7d minus7e)
Jane Smith	3	W	$3,000-$480=$2,520	$3,000	$2,520	$480

Examples of partially excluded income that are subject to regular verification requirements include:

- The Department of Veterans Affairs "Aid and Attendance" benefits – in accordance with 24 CFR 5.609(c)(4), these benefits may be excluded from income if they are used "specifically for, or in reimbursement of, the cost of medical expenses for any family member." Live-in or periodic medical assistance and services of doctors and health care professionals are among the services that may be counted as medical expenses. The PHA must verify the amount provided for aid and attendance medical expenses and the amount actually being used by the veteran for such expenses. Any portion of the benefit not used for such expenses would continue to be counted as income by the PHA when determining the family's annual income.
- Earnings in excess of $480 for full-time students 18 years old or older (24 CFR 5.609(c)(11) – in order to determine the amount of earnings to include in the calculation of the family's annual income, the PHA must verify the amount of employment income for these family members.

For a complete list of income exclusions, see 24 CFR 5.609(c).

6. Further Information. Any questions related to this notice should be directed to the nearest HUD Office of Public Housing within your region. Locations of these offices are available on HUD's website at http://www.hud.gov.

/s/
Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of:
Directors of HUD Regional and Field Offices of Public Housing;
Agencies that Administer the Housing Choice Voucher Program

Notice PIH 2013-18 (HA)

Issued: August 1, 2013

Expires: Effective until amended, superseded, or rescinded

Cross References:
Notice PIH 2011-19 (HA)
Notice PIH 2010-11 (HA)
Notice PIH 2008-13 (HA)
24 CFR § 982.505(d)
24 CFR § 982.503(c)(2)(ii)

Subject: Revision for Requests for Exception Payment Standards for Persons with Disabilities as a Reasonable Accommodation

1. Purpose. This notice supersedes Notice PIH 2011-19 (which extended Notice PIH 2010-11). Prior to this revision, public housing agencies (PHA) were informed that an exception payment standard **may** remain in effect until or unless a higher exception payment standard was warranted, requested, and subsequently approved. With this notice, PHAs **must** maintain the approved exception payment standard until or unless a higher exception payment standard is warranted, requested, and subsequently approved (see Section 5). Section 6 of the prior notice has also been revised to explain the expedition of the review process and allow for advanced copies of waiver requests to be sent to HUD Headquarters directly.

2. Background. One of the purposes of an exception payment standard is to ensure that a family with a person with disabilities can rent a unit that meets the disabled person's needs.

On a case-by-case basis, as a reasonable accommodation, a PHA may approve a payment standard amount up to 110 percent of the published fair market rent (FMR) if its payment standards are set below 110 percent of the FMR in accordance with 24 CFR § 982.505(d). Such higher payment standards must be requested by the family and subsequently approved, as necessary, by the PHA **after** a family with a disabled person or an individual person with disabilities locates a unit.

The HUD Field Office Public Housing Director can approve exception payment standards above 110 percent to 120 percent of the FMR as a reasonable accommodation in accordance with 24 CFR § 982.503(c)(2)(ii). Only HUD Headquarters may waive 24 CFR § 982.505(d) to allow the PHA to approve any exception payment standards higher than 120 percent of the FMR as a

reasonable accommodation.

Please note that Notice PIH 2013-03 *(Public Housing and Housing Choice Voucher Programs – Temporary Compliance Assistance)* allows PHAs to establish an exception payment standard of not more than 120 percent of the FMR without HUD approval as a reasonable accommodation. However, any PHA that wishes to implement this provision must notify HUD in accordance with section 4 of that notice.

3. Calculation Process. Since the family's rent share is capped at 40 percent of monthly adjusted income at initial occupancy when the gross rent exceeds the payment standard, the difference between 40 percent of monthly adjusted income and 30 percent of monthly adjusted income (i.e., 10 percent of monthly adjusted income) is subtracted from the gross rent (contract rent plus utility allowance) to determine the adjusted gross rent. Please note that the 40 percent cap will also be applied to families that need an exception payment standard to remain in their assisted units.

The adjusted gross rent is divided by the FMR for the unit size to determine its percentage of the FMR. If the adjusted gross rent is not more than 110 percent of the FMR, the PHA can review and approve the request. If the adjusted gross rent is more than 110 percent, but not more than 120 percent of the FMR, the review and approval may be done by the field office. If the adjusted gross rent is above 120 percent of the FMR, the request must be submitted to Headquarters. In all cases the approved exception payment standard should equal the adjusted gross rent. An example of the calculation process is attached.

4. Documentation for Exception Payment Standard Requests. To facilitate the review for an exception payment standard as a reasonable accommodation, the PHA should include the following documentation in its request:

A. Note whether the family is an applicant or participant family.

B. The number of household members including a live-in aide/s.

C. The voucher size the family is issued under the PHA's subsidy standards or any exception to those standards granted through a reasonable accommodation request; e.g., as a reasonable accommodation, a single-person family may be issued a two-bedroom voucher due to a need to store medical equipment.

D. The FMR for the voucher size or unit size whichever is smaller.

E. When either the disability or the need for the requested accommodation is not known or readily apparent, a statement from a health care provider regarding the need for the reasonable accommodation and the features of the unit (which may include its location) which meet that person's needs.

F. The contract rent and utility allowance for the unit.

G. A statement from the PHA that it has determined the rent for the unit is reasonable, and that the unit has the feature/s required to meet the needs of the person with disabilities as noted in the statement from the health care provider where such a statement is necessary (see E. above).

H. The household's monthly adjusted income.

I. Proposed effective date of the new lease or actual effective date of the lease renewal.

5. Application of Approved Exception Payment Standard. Exception payment standards **must** remain in effect until or unless a higher exception payment standard is warranted, requested, and subsequently approved.

6. Headquarters Review. The regulatory waiver process in Public and Indian Housing requires PHAs to first send their request to the appropriate field office; the field office then forwards the waiver request to the appropriate program office at HUD Headquarters along with a field office recommendation (See PIH Notice 2009-41). This process should be expedited through the various offices so that units are not lost when owners are not willing to hold them beyond a certain date. PHAs may fax or scan a copy to Headquarters for advanced review (see below).

7. Information Contact. Inquiries about this notice should also be directed to Ms. Smelkinson, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138 or by email at Phyllis.A.Smelkinson@hud.gov; the office fax number is 202-401-3963.

8. Paperwork Reduction Act. The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The following active information collections contained in this notice have been approved under the PRA - OMB Control Number 2577-0169.

/s/
Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

Attachment

EXAMPLE CALCULATION PROCESS

Fair Market Rent for Unit Size	$1,041
Family's monthly adjusted income:	823
30% of monthly adjusted income:	247
40% of monthly adjusted income	329
Difference between 30% and 40%:	82
Contract Rent	1,505
Utility Allowance	40
Gross Rent	1,545
Adjusted Gross Rent (1,545 – 82)	1,463
Percentage of FMR (1,463/1,041)	141%

8/20/14 PIH 2014-20; Program Eligibility Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

SPECIAL ATTENTION OF:
Regional Managers; Office of Public Housing Directors; Program Center Coordinators; Public Housing Agencies; Resident Management Corporations

NOTICE PIH 2014-20 (HA)
Issued: August 20, 2014
This notice remains in effect until amended, superseded or rescinded.

SUBJECT: Program Eligibility Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule

1. Purpose: On February 3, 2012, HUD published a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity (77 FR 5662) ("Equal Access Rule" or "rule"). The final rule requires HUD's assisted and insured housing programs are open to all eligible individuals regardless of sexual orientation, gender identity or marital status. The rule revises HUD's general program requirements by adding the following provisions at 24 CFR 5.105(a)(2):

   (a) A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall continue to be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status, and

   (b) No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, or any other recipient or sub-recipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted or HUD-insured housing for purposes of determining eligibility or otherwise making such housing available. (See Permissible Inquiries in item 6 herein.)

   Through this notice, the Office of Public and Indian Housing (PIH) provides guidance on how the Equal Access Rule applies to PIH-assisted housing programs administered by public housing agencies (PHAs). The rule does not create any additional protected classes under the Fair Housing Act or any other civil rights law. Although the Fair Housing Act does not include sexual orientation, gender identity, or marital status as protected classes, complaints involving LGBT persons may raise claims that are actionable under one or more of the Fair Housing Act's protected classes (See section 10 of this notice).

2. Applicability: The Equal Access Rule applies to all HUD-assisted and HUD-insured housing. This notice applies to all PIH programs administered by PHAs, affiliates,

instrumentalities and mixed-finance owner-entities, specifically the Public Housing, Section 8 Housing Choice Voucher (HCV), Project-Based Voucher (PBV), Project-Based Certificate (PBC) and Moderate Rehabilitation programs (collectively PIH-assisted housing programs). This notice also applies to PHAs under Moving to Work (MTW) and Rental Assistance Demonstration (RAD). This notice describes requirements and provides examples applicable to all PIH-assisted housing programs.

In addition, the Equal Access Rule applies to private owners that participate in housing programs funded under section 8 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437, who must make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status.

A private owner that participates in the HCV program becomes subject to the rule when the owner executes a housing assistance payments (HAP) contract with the PHA. It is at that point the owner becomes subject to the rule.

All housing providers are also subject to applicable state and local fair housing laws prohibiting discrimination because of sexual orientation, gender identity and/or marital status.

Individual offices within HUD are providing their own guidance on how the Equal Access Rule affects their programs and program participants. In addition, HUD's Native American programs will incorporate the requirements of making housing available regardless of sexual orientation, gender identity, or marital status and prohibiting inquiries on the basis of sexual orientation and gender identity after conducting tribal consultation.

3. Terms and Definitions. PHAs must use federal definitions and follow federal eligibility requirements in their administration of PIH-assisted housing programs. Accordingly, PHAs are required to update their admissions and continued occupancy policies (ACOP) and/or Administrative Plans consistent with the Equal Access Rule. The rule defines "sexual orientation" and "gender identity" at 24 CFR 5.100 and clarifies the term "family" at 24 CFR 5.403. *Sexual orientation* means homosexuality, heterosexuality or bisexuality. *Gender identity* means actual or perceived gender-related characteristics.

   The term "*family"* includes, but is not limited to the following, **regardless of actual or perceived sexual orientation, gender identity, or marital status**:

   (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person or any other single person; or
   (2) A group of persons residing together and such group includes, but is not limited to:
      (i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
      (ii) An elderly family;
      (iii) A near-elderly family;
      (iv) A disabled family;
      (v) A displaced family; and

(vi) The remaining member of a tenant family.

In addition, for categorizing family as defined above, the terms disabled family, elderly family and near-elderly family (per 24 CFR 5.403) are:

Disabled family means a family whose head (including co-head), spouse or sole member is a person with a disability.

Elderly family means a family whose head (including co-head), spouse or sole member is a person who is at least 62 years of age.

Near elderly family means a family whose head (including co-head), spouse or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62.

4. Required Revisions to PHA Plans and Policies: PHAs are required to review and update, if necessary, their ACOP and/or Administrative Plans to ensure consistency with the Equal Access Rule.

   a. Annual Plan: In accordance with 24 CFR 903.7(b), a PHA's Annual Plan includes a statement of the PHA's policies governing eligibility, selection and admissions. The PHA's definition of family as provided in the admissions and continued occupancy policies will have to be amended as a result of the rule and this notice. Thus, the next Annual Plan submitted by the PHA subsequent to the posting of this notice must include a statement in the section on eligibility, selection and admissions to reflect the change in the definition of family and the requirement to provide equal access regardless of sexual orientation, gender identity or marital status.

   b. Section 8 Administrative Plan: In accordance with 24 CFR 982.54, PHAs must revise their Administrative Plans to reflect the definition of "family" at 24 CFR 982.4 and the definition of "family composition" at 24 CFR 982.201(c):

      i. *Family.* A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program. See discussion of family composition at section 982.201(c).

      ii. *Family Composition. See definition of "family" in 24 CFR 5.403.*

   c. Public Housing Tenant Selection Policies: In accordance with 24 CFR 960.202, PHAs must revise their tenant selection policies to reflect the definition of "family" at 24 CFR 945.105:

      i. *Family.* A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program.

5. Equal Access and Prohibited Inquiries: Housing assisted under the U.S. Housing Act of 1937 must be made available without regard to actual or perceived sexual orientation, gender identity or marital status. HUD clarified the term "family" at 24 CFR 5.403 to preclude the exclusion of otherwise qualified persons who may identify as LGBT individuals, who have an LGBT relationship or who may be perceived as such.

   PHAs and owners are prohibited from inquiring about an applicant's or participant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available. This does not prohibit an individual from voluntarily self-identifying sexual orientation or gender identity.

6. Permissible Inquiries: The Equal Access Rule does not prohibit all inquiries concerning an applicant's or participant's sex. For example, the rule permits a PHA to ask an applicant's or participant's sex in order to determine the number of bedrooms for which a household may be eligible based on the PHA's written occupancy standards.

   In addition, PHAs must collect and report on a program participant's sex through form HUD-50058 and submit the data electronically to the Information Management System/PIH Information Center (IMS/PIC) (http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/50058.) HUD does not require reporting on sexual orientation through form HUD-50058 or in any other form. As noted above, sexual orientation means homosexuality, heterosexuality or bisexuality.

   PHAs may maintain voluntary and anonymous reporting of sexual orientation or gender identity for compliance with data collection requirements by state and local governments or other federal assistance programs so long as information obtained pursuant to such reporting has no bearing on eligibility for housing or program participation.

7. Program Compliance: A PHA's or owner's actions or policies that are inconsistent with the rule could result in HUD's determination that the PHA or owner has failed to comply with program requirements. HUD may pursue any available remedy, including sanctions or corrective action plans that it deems appropriate to remedy the violation. HUD may review a PHA's or owner's policies and performance to determine if it is complying with the Equal Access Rule. This may include monitoring by PIH or HUD's Office of Fair Housing and Equal Opportunity (FHEO). It may also include requests for information concerning allegations of noncompliance. The PHA or owner must cooperate with HUD and provide access to staff, records and beneficiaries as needed.

   Typically, HUD seeks voluntary corrective action in the event a PHA or owner violates a requirement under the Equal Access Rule. Applicants and participants may request corrective action directly from the PHA if they believe they have been denied housing or subjected to improper inquiries in violation of the rule.

8. Complaints to PHAs: Upon receipt of a complaint from an applicant or participant alleging a violation of the Equal Access Rule, the PHA must determine if a program violation occurred and implement appropriate corrective action(s). The PHA may seek assistance from its local HUD Field Office of Public Housing in order to make this determination. In all cases, the PHA may advise the family to file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act (see sections 10 and 11).

   In addition, the PHA must follow its written policies for responding to complaints; policies must include that the PHA provide written notice of receipt of the complaint to those alleged to have violated the rule and that the complainant be informed that such notice was made. Following an investigation of the allegations, the PHA must provide the complainant and those alleged to have violated the rule with findings from the investigation and either a proposed corrective action to resolve any violation or an explanation as to why corrective action is not warranted. The PHA must keep records of all complaints, investigations, notices and corrective actions consistent with its current record-keeping obligations.

9. Examples of Program Violations under the Equal Access Rule:

   a. A PHA asks a woman who has applied for assistance under a PHA's HCV program to update her eligibility information prior to the PHA issuing a voucher. She brings another woman with her to the PHA office. While completing program verifications, her companion puts her arm around her. The PHA's occupancy specialist believes that the women are lesbians and denies the woman's application because of perceived sexual orientation. The actions taken by the PHA's occupancy specialist constitute a violation of 24 CFR 5.105(a)(2)(i) by the PHA because the denial of housing assistance was based on perceived sexual orientation.

   b. A gay man who currently receives rental assistance under the PBV program contacts the property owner and requests to add his male partner, who is also income-eligible, to the lease so they may live together. The owner seeks approval from the PHA. The PHA denies the request stating that the couple does not meet the PHA's definition of "family," which requires that family members be related either through blood or marriage. The owner informs the family of the denial. The PHA's restrictive definition of "family" violates the rule's prohibition on considering sexual orientation or marital status when determining who qualifies as a "family" and who may occupy HUD-assisted housing. A PHA must determine whether a family is eligible for assistance without regard to the sexual orientation, gender identity, or marital status of any of its members. *See* 24 CFR 983.8 ("The PBV program requires compliance with all equal opportunity requirements under federal law and regulation, including the authorities cited at 24 CFR 5.105(a)"). In addition, the denial is a violation of 24 CFR 5.105(a)(2)(i) because the denial was based on sexual orientation and/or marital status.

   c. A gay man who currently receives rental assistance under the PBV program contacts the property owner to request to add his male partner, who is also income-eligible, to the lease so they could live together. The owner asks "Are you gay?" and denies the request when the tenant confirms that he is gay. The actions taken by the owner constitute a

violation of 24 CFR 5.105(a)(2)(i) and (ii) because the owner inquired about sexual orientation for the purpose of determining eligibility and making housing available, and the denial was based on sexual orientation and/or marital status.

10. Fair Housing Act Implications: The Fair Housing Act does not include sexual orientation, gender identity or marital status as protected classes. However, complaints involving LGBT persons may raise claims that are covered by one or more of the Fair Housing Act's protected classes. For example, courts have recognized that the Fair Housing Act's prohibition against discrimination because of sex includes discrimination based on non-conformance with sex stereotypes. Therefore, under certain circumstances, complaints involving sexual orientation or gender identity may be investigated under the Fair Housing Act.

    When reviewing alleged violations of the Equal Access Rule, FHEO determines whether the Fair Housing Act is implicated. If HUD lacks jurisdiction to investigate a complaint from an LGBT person, an applicant or beneficiary may still be protected under state and local laws that include sexual orientation, gender identity and/or marital status as protected classes. Many states and local jurisdictions prohibit housing discrimination on the basis of sexual orientation, gender identity and/or marital status, and HUD may refer complaints or other information concerning these protected classes to appropriate state and local fair housing enforcement agencies.

    Below are examples of actions that may violate both the Fair Housing Act and the Equal Access Rule:

    a. A gay man applies for public housing, but the PHA denies his application because he is gay and it presumes that, because he is gay, he is HIV-positive and may infect other tenants. This action violates 24 CFR 5.105(a)(2)(i) because the man is denied HUD-assisted housing based on sexual orientation. This action also violates the Fair Housing Act because the man is regarded as having a disability, HIV/AIDS. Disability, which includes a record of having a disability, or being regarded as having a disability, is a protected class under the Fair Housing Act.

    b. A lesbian tenant who dresses in masculine clothes alleges the PHA's property manager at the public housing complex where she resides refuses to make necessary repairs to her apartment. She alleges the property manager tells her that he "only does repairs for real ladies." An investigation confirms that the property manager refused to make the repairs because the tenant is a lesbian and did not conform to gender stereotypes. This action violates 24 CFR 5.105(a)(2)(i) because the action of the PHA's representative is based on sexual orientation and/or gender identity and is affecting the habitability of the tenant's housing. The rule requires that housing be made available regardless of the actual or perceived sexual orientation, gender identity, or marital status of a resident. This complaint may also raise a claim under the Fair Housing Act as discrimination based on sex, because the property manager's actions are based on the tenant's nonconformance with gender stereotypes.

c. A gay man alleges he was harassed by the PHA's maintenance worker at the public housing complex where he resides. The maintenance worker routinely told the tenant "you walk like a girl" and "you should man up," whistled at him and made sexual gestures. The tenant reported the harassment to the PHA, but the PHA made no effort to stop it. Therefore, as a result of inaction by the PHA, the tenant moved out. Due to the continued harassment, the PHA violated the requirement at 24 CFR 5.105(a)(2)(i) to make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status. The rule prohibits consideration of a person's sexual orientation throughout the tenancy, not just at the time of application. This conduct may also be considered sex discrimination under the Fair Housing Act because the actions of the maintenance worker may constitute discrimination based on gender non-conformity and/or sexual harassment.

In the example above, the tenant moved out of the assisted housing unit as a result of the harassment by the PHA maintenance work. Please note; a program participant is not required to leave the assisted housing unit, or terminate participation in the HCV program, for the purpose of filing a complaint for violation under the Equal Access Rule.

11. Further information: For further information about this Notice, contact your local HUD Office of Public Housing. Contact information is available through the PIH Customer Service Center, 1-800-955-2232 (toll free), and is available on HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/about/field_office. Fair Housing questions may be directed to appropriate Fair Housing Field Offices. Complaints may be filed electronically at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339.

/s/

Jemine A. Bryon, Acting Assistant Secretary
for Public and Indian Housing

U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of: Directors of HUD Regional and Field Offices of Public Housing; Agencies that Administer the Housing Choice Voucher Program	**Notice PIH 2014-25 (HA)** Issued: October 16, 2014 Expires: This notice remains in effect until amended, superseded or rescinded. Cross References: Notice PIH 2008-20, PIH 2009-22, PIH 2010-51

Subject: Over Subsidization in the Housing Choice Voucher Program

1. Purpose. On September 28, 2007, the Office of Inspector General (OIG) issued a report on over subsidization in the Housing Choice Voucher (HCV) program due to the issuance of vouchers with unit sizes greater than the number of family members in the household. Pursuant to the recommendation of the OIG, the Department issued clarifying guidance on the matter of categorization of live-in aides, other reasonable accommodation issues and corresponding data entry into the Inventory Management System (IMS)/Public and Indian Housing Information Center (PIC) through the notices cited above. Notice PIH 2010-51 extended and revised Notice PIH 2009-22 to explain subsidy standards in regard to live-in aides and their PHA-approved family member/s and data entry in IMS/PIC for family members of live-in aides.

On September 23, 2013, the OIG issued a follow-up report on over subsidization in the HCV program. Although it was noted that vast improvement had been made, there was still an amount in over-payments due to over subsidization. The OIG recommended that PIH provide guidance to the public housing authorities (PHA) on the data analytic tools available and the specific procedures to help detect and monitor over subsidized households, improper payment standards, and reporting errors to put at least $1,128,000 to better use annually. The following section will address that issue. In all other respects, this notice is consistent with the guidance PIH previously provided in Notice PIH 2010-51.

2. Detection and Monitoring of Over subsidized Households.

There are ad hoc reports in the IMS/PIC system that may enable PHAs to monitor the factors that would indicate over subsidization and other improper payments:

(1) Ad hoc reports may be accessed from the PIC main menu screen.

(2) "Form 50058 Ad hoc Report" should be selected under "*ADHOC"* on the left side of that screen. All of the information from the Family Report (Form HUD-50058) is available in an ad hoc report.

(3) Next, select "Tenant-based Voucher."

(4) The action types selected should be limited to: new admissions (1); annual reexamination (2); interim reexamination (3); portability move-in (4); and other change of unit (7); and Historical Adjustment (14).

(5) Then, the PHA should establish a date range for "Effective Date of Action" of at least 16 months to capture the majority of Family Reports in the current database.

(6) At the next screen, at a minimum, the PHA should select the following data elements: head of household (3b); number of members in the household (3t); the number of bedrooms in the unit (5d); the number of bedrooms on the voucher (12a); and the payment standard for the family (12j). Additional items can be selected as needed.

From the information on the ad hoc report, a PHA can ensure that the voucher size and payment standard are correct for each family and make corrections where necessary. A sample ad hoc report is attached. PHAs are encouraged to review these reports on a regular basis (e.g. monthly, quarterly) to ensure families are not being mistakenly over subsidized.

In performing quality control, the PHA should further review cases where the following "Red Flags" appear: (1) if the number of bedrooms on the voucher exceeds the total number in the household and (2) if the payment standard for the family does not match the number of bedrooms on the voucher or the unit size, if smaller. These are just red flags for possible overpayments. However, there may be a justified reason, e.g. an exception payment standard or an exception to the subsidy standards. To assist with corrective actions, please review section 3.A. through 3.E. below.

3. Programmatic Explanations.

A. Live-in Aides. The primary reason PHA issued vouchers with more bedrooms as recorded on line 12a of the Family Report than the number of family members recorded on line 3t is related to live-in aides. Although a health care provider must document the need for a live-in aide (which would result in the issuance of an additional bedroom size voucher), the live-in aide must be identified by the family and approved by the PHA first.

The definition of a live-in aide is recorded in 24 CFR § 5.403 which states that a live-in aide is a person who resides with one or more elderly persons, near-elderly persons or persons with disabilities and who is: (1) determined to be essential to the care and well-being of the persons; (2) is not obligated for the support of the persons; and (3)

would not be living in the unit except to provide the necessary supportive services. It should be noted that the definition applies to a specific person (i.e., identified live-in aide). In accordance with this definition, a live-in aide is not a member of the assisted family and is not entitled to the HCV as the remaining member of the tenant family.

In accordance with 24 CFR § 982.316, the PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by a family member with a disability. The PHA may disapprove a particular person as a live-in aide if s/he has: (1) committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; (2) committed drug-related criminal activity or violent criminal activity; or (3) currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act. Additionally, under 24 CFR § 982.402(a), the PHA must establish subsidy standards to determine the number of bedrooms needed for families of different sizes and compositions. Consequently, PHAs may not approve an unidentified live-in aide, nor a larger unit than the family qualifies for under the PHA's subsidy standards for an unidentified live-in aide. The guidance outlined in this Notice is in accordance with these regulatory provisions.

Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom should not be approved for a live-in aide under these circumstances.

B. Reasonable Accommodation Issues. A family may always request a reasonable accommodation to program rules, policies, practices, or services, including to the live-in aide policy, to permit program participation by individuals with disabilities. A family's composition or circumstances may warrant the provision of an additional bedroom to permit disability-related overnight care and allow the family equal use and enjoyment of the unit. Such limited exceptions to the established subsidy standards are permitted under 24 CFR § 982.402(b)(8). The PHA must consider requests for an exception to the established subsidy standards on a case-by-case basis and provide an exception, where necessary, as a reasonable accommodation. A reasonable accommodation request may only be denied if it would impose an undue financial and administrative burden on the housing provider or fundamentally alter the nature of the provider's operations. The PHA shall document the justification for all granted exceptions.

C. Subsidy Standards. A PHA may only approve one additional bedroom for a live-in aide. Although a live-in aide may have PHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The PHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

D. Medical Equipment. Although PHAs may approve an additional bedroom for medical equipment if the need is documented by a health care provider, the actual equipment in the extra bedroom should be verified by the PHA during the annual inspection of the unit. If the extra bedroom is not being used for the intended purpose, the PHA must reduce the subsidy standard and corresponding payment standard at the family's next annual recertification. However, the PHA may take further action, if it believes any family obligations under 24 CFR § 982.551 were violated.

E. Other Causes. The secondary cause of over subsidization was the failure of the PHA to change the voucher unit size after changes in family composition. Although families are not required to move from an assisted unit when the number of bedrooms in the unit exceeds the number of bedrooms for which the family is eligible, the payment standard must conform to the PHA's subsidy standards at the family's next annual recertification after the change in family composition.

4. PIC Data Entry. PHAs are expected to ensure that data on the Family Report is correct when entered in IMS/PIC. Whenever there is a change in the subsidy standard and corresponding payment standard for which the family is eligible, lines 12a and 12j of the Family Report must be adjusted accordingly. All live-in aides and, if applicable, their family members, must be entered on the report and coded L (live-in aide) in section 3h.

5. Effective Date. This notice is effective upon publication.

6. Information Contact. Inquiries about this notice should be directed to the staff in your local field office.

7. Paperwork Reduction Act. The information collection requirements contained in this letter have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The following active information collections contained in this Notice have been approved under the PRA - OMB Control Number 2577-0083.

/s/

Jemine A. Bryon, Acting Assistant Secretary
for Public and Indian Housing

Attachment

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–5453–F–02]

RIN 2577–AC86

Housing Choice Voucher Program: Streamlining the Portability Process

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing portability in the Housing Choice Voucher (HCV) program. Portability is a feature of the HCV program that allows an eligible family with a housing choice voucher to use that voucher to lease a unit anywhere in the United States where there is a public housing agency (PHA) operating an HCV program. The purpose of HUD's changes to the portability regulations is to enable PHAs to better serve families and expand housing opportunities by improving portability processes.

DATES: *Effective:* September 21, 2015.

FOR FURTHER INFORMATION CONTACT: Becky Primeaux, Director, Housing Voucher and Management Operations Division, Office of Housing Choice Vouchers, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410–8000, telephone number 202–708–0477 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this final rule is to improve the portability process of the HCV program. Under the HCV program, the participating family is free to choose any housing that meets the requirements of the program. As a means to enable housing choice and mobility to encourage social and economic integration, the HCV program offers voucher portability; that is, the ability of a voucher holder to use the voucher assistance outside the jurisdiction of the PHA that initially issues the family its voucher. While portability offers an important mechanism to increase housing choice, this feature has not been maximized by PHAs and participating families because the current process for allowing a family to move from one jurisdiction to another is time consuming and burdensome. HUD recognizes that for the HCV program's goals to support mobility and housing choice to be realized, the regulations governing the portability process must be clarified so that the burden on families and the PHA is reduced. This final rule completes the rulemaking process, which commenced in 2012, to revise the existing portability regulations to streamline the portability process and facilitate the ability of participating families to move to the jurisdiction of their choice.

B. Summary of the Major Provisions of the Regulatory Action

The key regulatory changes by this final rule include:

- Removing the mandatory absorption requirement discussed in the proposed rule and clarifying the notification requirement for mandatory voucher suspension;
- Requiring an initial PHA to notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding;
- Providing that the voucher issued by the receiving PHA to the family may not expire before 30 calendar days has passed from the expiration date of the initial PHA's voucher;
- Requiring briefings for all participating on how portability works and the benefits of living in low-poverty census tracts; and
- Allowing a family to choose the receiving PHA to administer their voucher should they choose to use portability.

Please see Section III of this preamble, entitled ''Changes at the Final Rule Stage'' for a more detailed discussion of all the changes proposed by this rule.

C. Costs and Benefits

The changes made by this final rule are designed to minimize burden for PHAs and participating HCV families and thereby increase the ability of participating families to live in areas of their choice or relocate to a new area for employment opportunities or to gain access to preferred schools for their children. In addition, the improved portability process contributes to helping victims of domestic violence, dating violence, sexual assault, and stalking have access to the resources necessary to relocate to a safe, stable home away from an abuser. Further, moves to areas with relatively low concentrations of neighborhood poverty have shown to relay important benefits to housing choice voucher families, in particular mental and physical health for adults and long-term educational and earning gains for young children. HUD recognizes that some policies may increase burden for some PHAs; however, the added clarity to the portability process afforded by this final rule is expected to improve the portability process and reduce the burden on families and PHAs.

The streamlining changes do not add any substantial cost to the HCV program.

II. Background—the March 28, 2012, Proposed Rule

On March 28, 2012, at 77 FR 18731, HUD published a rule in the **Federal Register** that proposed to amend HUD's regulations governing portability in the HCV program. The HCV program is the Federal Government's largest program for assisting very low-income families, the elderly, and persons with disabilities to afford decent, safe, and sanitary housing in the private market. The HCV program is authorized by section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1473f(o)) (1937 Act), and the HCV program regulations are found in 24 CFR part 982.

Housing choice vouchers are administered locally by PHAs. PHAs receive Federal funds from HUD to administer the HCV program. Under the HCV program, housing assistance is provided on behalf of the participating family who is responsible for finding a suitable housing unit of their choice where the owner agrees to rent under the program. The participant is free to choose any rental housing, including single family homes, townhouses, and apartments, that meets the requirements of the program and is not limited to units located in subsidized housing projects. Under certain circumstances, if authorized by the PHA, a family may use its voucher to purchase a modest home.

A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program. The PHA determines the amount that the family will contribute toward rent, which is generally 30 percent of its adjusted annual income. A key feature

of the HCV program is the mobility of the voucher assistance. Section 8(r) of the 1937 Act provides that HCV participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located.

The term ''portability'' refers to the process of leasing a dwelling unit with tenant-based housing voucher assistance outside of the jurisdiction of the PHA that initially issued the family its voucher (the initial PHA). The HCV regulations, found at 24 CFR 982.353 through 982.355, detail where a family may move and the responsibilities of the initial PHA and the receiving PHA (the PHA with jurisdiction over the area to which the family desires to move). Situations have arisen over time that caused HUD to identify several issues that may delay or impede the ability of families to relocate with their voucher.

This final rule takes into consideration public comment received on the March 28, 2012, proposed rule and: (1) More clearly delineates the roles of initial and receiving PHAs; (2) improves accountability in portability billing arrangements between PHAs; and (3) allows families to more easily search for and lease a rental unit in their desired location.

III. Changes at the Final Rule Stage

In response to public comment and following further consideration of portability issues by HUD, this final rule makes certain changes to the regulations proposed in the March 28, 2012, rule. Changes made in response to public comment, issues raised by commenters, and HUD's responses to the comments are further addressed in Section III of this preamble.

The following highlights the more substantive changes made to the proposed rule at this final rule stage:

1. *Definition of Absorption (§ 982.4(b)).* To be consistent with HUD's portability regulations at § 982.355(d), which allows a PHA to absorb the family instead of billing the initial PHA, HUD revises the definition of absorption under the HCV program to mean the point at which a receiving PHA starts making assistance payments with funding under its consolidated Annual Contributions Contract (ACC), rather than billing, the initial PHA. The current definition implies that, in order to absorb a family, the receiving PHA has to first bill the initial PHA. The definition in this final rule also amends the recently revised definition in HUD's ''Removal of Obsolete Section 8 Rental Assistance Certificate Program Regulations,'' [1] which was effective on March 19, 2015, to be consistent with this final portability final rule.

2. *Mandatory voucher suspension (§ 982.4 and § 982.303(c)).* HUD revises the notification requirement and definition pertaining to mandatory voucher suspension to provide clarity and avoid the possibility of disputes between families and PHAs.

3. *Notification requirement before denying moves for insufficient funding (§ 982.354).* HUD revises the written notification requirement to require an initial PHA to notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding.

4. *Portability processing procedures (§ 982.355(g)).* HUD revises § 982.355(g), which pertains to special purpose vouchers (SPVs), to clarify that PHAs must administer SPVs in accordance with HUD-established policy, including any alternative program requirements established by HUD for SPVs.

5. *Term of receiving PHA voucher (§ 982.355(c)(13)).* HUD revises § 982.355(c)(13) to provide that the voucher, issued by the receiving PHA to the family, may not expire before 30 calendar days have passed from the expiration date of the initial PHA's voucher. However, if the initial PHA's voucher has expired before the family arrives in the jurisdiction of the receiving PHA, the PHA must contact the initial PHA to determine if the initial PHA will extend the voucher. Unless the initial PHA is willing to extend its voucher under these circumstances, the receiving PHA may not issue the family a voucher.

6. *Administrative fee (§ 982.355(e)(3)).* HUD revises § 982.355(e)(3) to clarify that if the ongoing administrative fees for the program have been prorated due to insufficient administrative fee funding, the administrative fee that the receiving PHA may bill the initial PHA is also subject to the same proration.

7. *Mandatory absorption of portability vouchers (§ 982.355(d)(2)).* HUD removes the mandatory voucher absorption requirement and instead states that if HUD should choose to require mandatory absorption, HUD must publish a notice in the **Federal Register** and provide PHAs or affected PHAs (if not applicable to all PHAs) with the opportunity for public comment under § 982.355(d)(2)).

8. *Family briefings (§ 982.301(a)(2), (a)(3), (b)(1), (b)(4), and (b)(9)).* HUD revises § 982.301(a)(2), (a)(3), (b)(4), and (b)(9) to require briefings for all families with a HCV on the benefits of living in low-poverty census tracts.

9. *Providing list of landlords to moving families (§ 982.301(b)(11)).* HUD revises § 982.301(b)(11) to replace the current reference to ''other parties known to the PHA'' for ''other resources (such as newspapers, organizations, and online search tools) known to the PHA'' that may assist the family in locating a unit, and to provide that the list of landlords or other resources covers areas outside of poverty or minority concentration.

10. *Allow a family to choose the receiving PHA (§ 982.355(b)).* HUD revises § 982.355(b) to allow a family to choose the receiving PHA to administer its voucher, if there is more than one PHA for the jurisdiction where the family seeks to lease a unit.

11. *Portability and Project-Based Vouchers (PBV) (§ 982.355).* HUD did not adopt the change to § 982.355(g) in the proposed rule, which stated that the provisions on portability do not apply to the PBV program. HUD is concerned that the provision as proposed could be misinterpreted to preclude any potential touchpoints between the two regulations. To address such issues, HUD plans to issue separate guidance on this subject.

12. *Other technical changes.* In addition to the changes discussed above, HUD makes additional technical changes in this final rule. HUD revises § 982.355(d)(1), which addresses HCV absorption by the receiving PHA and the availability of funding under the consolidated ACC for the receiving PHA's HCV program. HUD revises this section to remove the reference to the effective date of the Housing Assistance Payment (HAP) contract as the date that the receiving PHA must know if it has funding to absorb the voucher. Since the receiving PHA may choose to subsequently end a billing arrangement and absorb the family after the effective date of the HAP contract, the reference was confusing. The change clarifies that if the receiving PHA wishes to absorb the family into the receiving PHA program, the receiving PHA must have funding available under its consolidated ACC to do so.

HUD makes technical revisions to §§ 982.301(b)(1), 982.554(c)(4), and 982.637(c)(1) to conform with the policy changes implemented elsewhere in this final rule. Finally, HUD revises §§ 982.403(c), 982.551(f), and 982.641(b)(11) to correct an incorrect citation.

[1] See *http://www.gpo.gov/fdsys/pkg/FR-2015-02-17/pdf/2015-03037.pdf.*

IV. Discussion of Public Comments Received on March 28, 2012, Proposed Rule

The comment period for the proposed rule closed May 29, 2012. HUD received 52 comments on this proposed rule. The commenters included PHAs, organizations representing the public housing industry, tenant advocacy groups, State and local government agencies, and other interested members of the public.

The majority of comments were from PHAs and public housing representative organizations. The PHAs that commented varied in size and geography. In general, the comments from PHAs were mixed. There were several proposals that PHAs supported (*e.g.,* allowing an extension beyond 30 days for porting vouchers, and actively providing a list of landlords) and others to which PHAs expressed opposition (*e.g.,* restricting receiving PHAs from rescreening the porting family). Advocacy group commenters opposed the proposal regarding rescreening of porting families by the receiving PHA and expressed concern about the civil rights implications of such proposals. Specific issues raised by commenters and HUD's responses are as follows:

Comment: Concerns that the rule will increase regulatory burden and reduce local PHA discretion. Many commenters, while supportive of portability and HUD's goals to streamline and reduce administrative burdens, expressed concerns that the proposed regulatory changes did not sufficiently meet these goals. The commenters wrote that, rather than streamlining portability administration, the proposed rule would place additional requirements on PHAs (such as notifying the HUD field office before denying moves for insufficient funding, extending the term of the voucher for at least 30 days beyond the initial termination, requiring mandatory absorptions, and capping administrative fees). The commenters wrote that these policies would add to the burden and costs of administering vouchers, and suggested that HUD consider including the proposed new regulatory requirements in HUD's upcoming voucher administrative fee study to determine their real cost on PHAs and families. The commenters also stated that many of the new requirements would reduce local PHA discretion and flexibility.

HUD Reponses: HUD understands that some policies may increase burden for some PHAs. However, HUD disagrees that other policies in this rule, such as capping administrative fees, will increase administrative burden. HUD further believes that the added clarity to the portability process afforded by this final rule will improve the portability process and reduce the burden on families and PHAs. To address such concerns, each of these four issues is specifically addressed below. With respect to HUD's study on voucher administrative fees, the study is complete and, because of the time frame, took into consideration costs associated with portability, before this rulemaking.

Comment: Mandatory voucher suspension (§ 982.4 and § 982.303). Several commenters supported HUD's proposed change to the definition of ''suspension.'' The commenters wrote that the proposed language would increase the likelihood that families will successfully move during their voucher term. Other commenters, however, expressed concerns about the change, writing that the proposed revision would eliminate local discretion and increase administrative complexities and costs. The commenters wrote that the proposed change would require PHAs to monitor the term of the suspension and to notify families of that term and its subsequent expiration. The commenters also wrote that the mandatory suspension could result in two PHAs administering the same voucher, with the voucher remaining outstanding indefinitely and limiting the ability of the PHA to accurately report, budget, and forecast available voucher funding.

HUD Response: The proposed rule provided that the suspension term starts when the family submits a request for tenancy approval and ends when the PHA approves or denies such request. While HUD understands how voucher suspensions may impact a PHA's processes, HUD believes the benefit to the family outweighs the possible increase in administrative burden placed on the PHA. Based on the length of time an inspection takes to be completed, and the possibility that the voucher could expire if it were not suspended, families may be harmed by such delays due to no fault of their own. Furthermore, PHAs should be actively monitoring and managing their process for approving the assisted tenancy so the mandatory suspension rule should not significantly affect a PHAs ability to report, budget, and forecast available funding.

As noted earlier, HUD revised the proposed language on mandatory voucher suspensions to clarify that the suspension lasts until the family is notified in writing by the PHA whether the request for PHA-approval of the tenancy has been approved or denied. Specifying that the family must be notified before the voucher suspension ends provides clarity and avoids potential disputes between families and PHAs. See § § 982.4 and 982.303(c).

Comment: Notification requirement before denying moves for insufficient funding (§ 982.354). Several commenters expressed support for this provision, but suggested that HUD specify the time period in which a PHA must submit notice to HUD, as well as the date by which HUD will respond to the PHA's written notice. Other commenters expressed opposition to the requirement. They said that the receiving PHA is already required to notify the initial PHA whether the receiving PHA will bill the initial PHA for the family, or will absorb the voucher, and such requirement results in additional delays for the family.

HUD Response: Notification to the local HUD office when a PHA is denying moves due to insufficient funding is not a new requirement. Notice PIH 2012–42 (HA) [2] provides for this notification requirement, and the inclusion of this provision in the proposed rule was intended to codify it in regulation. HUD understands that requiring the PHA to notify the local HUD office adds to the administrative process. However, this requirement is important to HUD in carrying out its oversight and monitoring function. Through the notification requirement, HUD can better ensure that participants are not unnecessarily prohibited from moving under portability or within the PHA jurisdiction.

HUD agrees that more specificity is needed with respect to the time frames associated with this requirement. The final rule provides that a PHA must notify HUD in writing within 10 business days of the date on which the PHA determines it is necessary to deny moves based on insufficient funding. If HUD determines that the PHA lacks the grounds to deny moves due to insufficient funding, the PHA must immediately inform any affected family and immediately process the family's request to move.

Comment: Require HUD approval to deny incoming families and other portability processing procedures (§ 982.355). Several commenters expressed support for the requirement that a PHA must have written approval from HUD before refusing any incoming families. The commenters also suggested that HUD should clarify the procedures that PHAs must use when

[2] See *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-42.pdf.*

allowing portability of special purpose vouchers, referred to in this preamble as SPVs (*e.g.,* Non-Elderly Disabled (NED), Veterans Affairs Supportive Housing (VASH), Family Unification Program (FUP), and 5-Year Mainstream). Commenters suggested that HUD specify limited circumstances in which a PHA may not be required to accept incoming families. Other commenters expressed concern that prohibiting the reversal of a decision to absorb vouchers will keep PHAs from deciding to absorb vouchers, thus increasing the amount of portability billing.

HUD Response: HUD appreciates these comments and has made some clarifying changes in the final rule with respect to SPVs, in § 982.355(g). The proposed rule included an example of a circumstance where a PHA may be allowed to deny an incoming family—a PHA in a declared disaster area. However, HUD cannot predict all limited circumstances that would warrant a denial of incoming families and instead prefers to handle such requests on a case-by-case basis.

In order to specify the procedures related to SPVs, the proposed rule set out requirements relating to portability moves of SPVs that were applicable to all SPVs; however, due to the intricacies of each SPV program, HUD determined that specific portability procedures for each SPV are better suited for guidance and not regulation.

Finally, some commenters claimed that HUD's policy to prohibit PHAs from reversing a decision to absorb a voucher may cause some PHAs to be more inclined to not absorb a voucher. HUD was unable to find evidence that the requirement will have such an effect, or that the impact on portability billings will be significant. Moreover, HUD determined that it is important to eliminate the potential negative effect such a reversal could have on the family.

Comment: Portability processing procedures and allowing email communications between initial and receiving PHA (§ 982.355). Several commenters expressed support for the requirement that PHAs communicate with other PHAs through email or other confirmed delivery methods. Commenters wrote that email is simpler than other methods, and its use has already been implemented by many PHAs. Some commenters wrote that some PHAs do not have email contacts for other PHAs, so it would be helpful for HUD to add an email field to the HUD–52665 form. Other commenters, however, had concerns about relying on email, and suggested that email supplement, rather than replace, other forms of communication.

HUD Response: While HUD supports email as the preferred method of communication, the final rule allows for the use of other methods of communication that have delivery confirmation. HUD also made a technical change to § 982.355(c)(4) to correct the reference to the ''receiving'' and not the ''initial PHA.''

Comment: Voucher term of receiving PHA voucher (§ 982.355). Several commenters expressed support for the requirement that PHAs provide an additional 30 days on the voucher term to accommodate the time a family needs to attend a briefing session and locate a new unit. Some commenters, however, suggested that the extension be provided at the agency's discretion and not be mandatory. Another commenter encouraged HUD to add language to the regulation making it clear that receiving PHAs may choose to issue vouchers with more than the additional 30 days of search time. Other commenters objected to extending the voucher for 30 days. These commenters wrote that a blanket, national requirement that voucher terms last an additional 30 days would reduce the number of unit months leased nationally.

HUD Response: While requiring a receiving PHA to add an additional 30 calendar days to the term of the voucher may increase a PHA's administrative burden, providing an additional 30 calendar days to the receiving PHA's voucher term accommodates the additional time that the portability process requires, and does not count against the family's search time.

HUD agrees that the language in the proposed rule was too restrictive and has changed the language in the final rule to accommodate extensions of the term of the receiving PHA voucher beyond 30 calendar days if the receiving PHA chooses to allow such extensions. See § 982.355(c)(13).

Comment: Capping administrative fees (§ 982.355). Several commenters supported capping the amount paid to the receiving PHA for administrative fees at 100 percent of the receiving PHA's administrate fee rate. Other commenters were opposed to this proposal stating that it would be unfair for a receiving PHA to receive 100 percent of the fee since they are not doing 100 percent of the work.

Several commenters requested clarification of the administrative fee structure. The commenters wrote the proposed rule does not address the proration issue and that it is unclear if the cap is based on the receiving PHAs' published fee or prorated fee. These commenters stated that they were also unclear which PHA is responsible for determining fees.

Other commenters suggested alternatives or changes to the proposed administrative fee requirements. Commenters suggested that HUD consider prohibiting PHAs from prorating administrative fees for their outgoing portability vouchers and simply use the 80 percent of the published administrative fee. Other commenters suggested a flat administrative fee to be paid to the receiving PHA. Commenters also suggested that HUD consider reinstatement of the ''hard to house'' fee for SPVs.

HUD Response: Under the proposed rule, the initial PHA must reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit. Under this structure, the initial PHA always gets to keep a percentage of the administrative fee of the voucher, and the receiving PHA does not bill for an amount that is higher than the receiving PHA's administrative fee. Prior to this final rule provision, if the receiving PHA's prorated administrative fee was $45 and the initial PHA's prorated administrative fee was $60, for example, the receiving PHA would receive $48 (or 80 percent of $60) for the voucher, which is more than the $45 it would get for administering its own vouchers. In the same scenario under this final rule, the receiving PHA would bill for $45 for its share of the administrative fee and the initial PHA would keep $15 of the prorated monthly on-going admin fee for that unit under lease.

HUD also revises § 982.355(e)(3) to mirror, where appropriate, the language concerning ongoing administrative fees under current voucher regulations at § 982.152(b)(1). The paragraph is also revised to clarify that the receiving PHA is not precluded from billing an initial PHA for more than 100 percent of its own administrative fee if both PHAs agree to a different amount of reimbursement that is more than 100 percent of the receiving PHA's administrative fees. HUD agrees with commenters that, as stated in the proposed rule, HUD does not address whether the administrative fee is based on the initial PHA's published or prorated fee. Therefore, HUD is adding language to clarify that, if administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill under this section (*i.e.,* the receiving PHA may bill

for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's prorated ongoing administrative fee).

Comment: Mandatory absorption of portability vouchers (§ 982.355(d)). Several commenters expressed support to require PHAs to absorb porting vouchers. However, several of the commenters requested clarification on the following areas: (1) The time period HUD will use to determine a PHA is below the 95 percent threshold; (2) how much notice a PHA will be provided before being required to absorb vouchers; (3) what data HUD will use to measure utilization of vouchers and budget authority; and (4) whether the receiving PHA will be prohibited from issuing vouchers to new families in their jurisdiction without having first absorbed all billed portability families.

Several other commenters expressed opposition to the proposal, stating that the proposed provision fails to take local circumstances into consideration. Some commenters expressed concern about possible negative consequences for small PHAs. They wrote that mandatory absorption may hurt small PHAs if they have a small allocation of vouchers or some vouchers are canceled or terminated. Therefore, a small PHA may instead prefer to draw from its waiting list, instead of absorbing porting vouchers. Other commenters wrote that imposing requirements on some PHAs to absorb portable vouchers without making absorption the standard solution is problematic. Finally, commenters also expressed concern that the burden would fall disproportionately on SPVs.

HUD Response: In this final rule, HUD removes the mandatory absorption requirement from the proposed rule. In considering the mandatory absorption requirement, HUD weighed various factors such as: (1) Monitoring leasing rates to assess when the requirement should be put in place and when it should be removed; (2) the impact on the utilization rate of initial PHAs (when a receiving PHA absorbs a port-in voucher for which it was previously billing, it frees-up budget authority and reduces the number of unit months leased for the initial PHA, and the initial PHA may not have sufficient time to utilize its increased budget authority or increase its reduced unit months leased); (3) determining the timing of such assessments; (4) the impact on the receiving PHA's waiting list as absorption would reduce the number of families on the waiting list that could be served; (5) the impact such a requirement could have on renewal funding; and (6) the impact requiring the use of Net Restricted Position (NRP) would have on PHAs.

After consideration of such factors, HUD decided not to adopt the mandatory absorption requirement as proposed. This final rule continues to afford HUD the ability to mandate absorptions on a case-by-case basis. Should HUD determine to impose such a requirement in the future for all PHAs that: (1) Are utilizing less than 95 percent of their available budget authority, and (2) have a leasing rate of less than 95 percent, it shall do so through a notice in the **Federal Register** stating such proposed policy and procedures, with an opportunity for public comment for a period of no less than 60 calendar days. After consideration of public comments, HUD will publish a final notice in the **Federal Register** advising PHAs and the public of HUD's final determination on mandatory absorption.

V. Comments on Specific Issues Raised by HUD

Comment: Transfer of ACC funds between initial and receiving PHA. HUD invited comments on how to redesign portability in a way that would eliminate or minimize the administrative burdens associated with portability billings. In the past, some PHAs suggested that HUD transfer funds from the initial PHA's consolidated ACC to the receiving PHA's consolidated ACC, in order to transfer the money without direct PHA involvement. Others suggested a sharing of costs by the initial and receiving PHA, whereby the initial PHA would pay to the receiving PHA no more than the family's subsidy at the initial PHA location.

Of those commenters that responded to the request in the proposed rule, a few supported a transfer of funds between the initial and receiving PHAs for portability vouchers, while others were against it. Some commenters wrote that tracking transfers of this type would be an added administrative burden on HUD and PHAs. Commenters noted that PHAs with a high percentage of outgoing portability vouchers would be disproportionately affected by such transfers. A high volume of voucher transfers may jeopardize these PHAs' operations, and make the PHAs' budgets more unstable and less predictable. Commenters favoring the transfers of ACC funds for portability wrote that such transfers would result in numerous efficiencies by eliminating billing arrangements among PHAs.

As for sharing the costs between PHAs, a commenter wrote that it is unfair for the initial PHA to pay no more than the family's subsidy to the receiving PHA because it does not recognize the real cost for the receiving PHA for administering the voucher, but the commenter suggested that an administrative fee should still be paid.

HUD Response: HUD agrees with the commenters that expressed concerns that transfers of ACC funds under portability may have potential negative effect on PHAs, especially those with a high percentage of outgoing portability vouchers. Also the administrative burden of such transfers on HUD and PHAs outweighs eliminating or minimizing portability billings. With respect to limiting the amount the initial PHA pays for HAP under the billing option to no more than it would pay for that voucher if leasing in their jurisdiction, and having the receiving PHA share the cost, HUD concluded that such sharing of the costs would be administratively burdensome on PHAs, disproportionately affect PHAs with a high percentage of incoming portability vouchers, needlessly complicate the portability process, and would not reduce portability billings. Therefore, HUD did not incorporate this change into this final rule.

Comment: Rescreening of families using portability. HUD solicited comments on how to minimize hardship on families when the receiving PHA's screening criteria is more stringent than the initial PHA's criteria. Several commenters supported a proposed restriction on rescreening of porting families. These commenters wrote that rescreening presents a significant barrier for voucher families trying to relocate to areas that offer greater opportunity. The commenters wrote that, for true mobility, rescreening must not be allowed.

Other commenters, all PHAs, supported rescreening by the receiving PHA. A commenter wrote that PHAs cannot be expected to operate using multiple screening standards. A commenter also wrote that it is unfair to families that are ineligible under the receiving PHA's criteria, while those from another jurisdiction are allowed to participate in the HCV program.

HUD Response: HUD agrees that receiving PHAs should be allowed to apply their own screening standards consistently among families in their program and for families moving into their jurisdiction under portability. However, it is important that moving families be informed that they are subject to screening based on the receiving PHA's criteria, and that the receiving PHA's screening criteria may be different than that of the initial PHA. Any potential hardship on the family may be minimized, to some extent, if

families are aware ahead of time if the receiving PHA will be rescreening incoming families. This information should be incorporated into the briefing packet as discussed below.

Comment: Requirement and content of HCV family briefings. HUD solicited comments on whether the briefing should be revised to highlight the factors and trade-offs a family should consider when leasing a unit with voucher assistance. These factors include, but are not limited to: employment opportunities; safety, health and environmental amenities; public transportation; the quality of schools; access to social services; the quality of housing; and proximity to family and friends. Comments were also solicited on whether information on the benefits of living in low-poverty census tracts should be provided to all families selected to participate in the HCV program, and not just those families living in high-poverty census tracts, as is provided in the codified regulation. The majority of commenters expressed opposition to expanding the briefing requirements, stating that the existing briefing requirements are already complex and any expansion would increase administrative burden. Several commenters wrote that the requirements of the family briefings are already covered under the Section 8 Management Assessment Program indicator on expanding housing opportunities and deconcentration.

HUD Response: HUD has determined that providing information about the factors the family should consider when determining where to lease a unit with voucher assistance will only be required as part of the briefing should HUD make such information available to PHAs for distribution. If required, PHAs are to provide such information as part of the oral briefing and the information packet provided to families selected to participate in the program. HUD therefore revises the regulation at § 982.301 accordingly.

HUD has also determined that an explanation of the benefits of living in low-poverty census tracts should be provided to all families, not just those families living in high-poverty census tracts. This explanation of benefits should also be included in the information packet provided to families selected to participate in the HCV program.

In making this determination HUD considered the effect on both families and PHAs. While families who already live in low-poverty census tracts may be aware of the benefits of living in such areas, not all families may have such awareness, and HUD does not see any disadvantages in providing all families such information. While there may be some administrative cost to PHAs in providing such information to all families selected to participate in the program, this change will also provide some administrative relief for PHAs. With the change, PHAs will not have to determine which families live in high-poverty census tracts to determine who needs the additional briefing. In this regard, a commenter wrote that most PHAs already provide the same information regardless of where the family lives.

HUD determined that information on how portability works should be provided during the briefing and as part of the information packet to every family, not just those who are eligible to move under portability. Accordingly, HUD revised the regulation at § 982.301(a)(2) and § 982.301(b)(4). HUD is also revising some of the required content of the family briefings related to portability in this final rule. In addition to an explanation of how portability works, the briefing should also include information on how portability may affect the family's assistance through rescreening, changes in subsidy standards and payment standards, and any other elements of the portability process that may affect the family's assistance.

Comment: Providing list of landlords. HUD solicited comments on whether to continue requiring PHAs to provide families with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, and whether additional information on areas of opportunity or neighborhoods would be beneficial for families. The majority of commenters responding to this solicitation of comments were PHAs that supported the provision of a list of landlords. These commenters stated that such lists may be extremely helpful to voucher participants who are seeking housing and may not be aware of local housing opportunities. Some commenters suggested that providing the list to voucher participants should be voluntary. A minority of commenters expressed concern that such lists may result in steering families to high-poverty and racially concentrated areas, and that PHAs should be required to assess such lists to ensure they do not steer such families.

HUD Response: HUD agrees that such written references could be essential to a successful housing search, particularly to families who are moving under portability and may not be familiar with the new jurisdiction. HUD also agrees that PHAs that choose to maintain such lists should be mindful of the need to provide housing opportunities to families in nonracially and nonpoverty concentrated areas. At this final rule stage, HUD retains the requirement to provide a list of landlords known to the PHA that may be willing to lease a unit to the family. Accordingly, HUD modifies § 982.301(b)(11), to replace the current reference to ''other parties known to the PHA'' for ''other resources (such as newspapers, organizations, and online search tools) known to the PHA'' that may assist the family in locating a unit, and to provide that the list of landlords or other resources covers areas outside of poverty or minority concentration.

Comment: Allow a family to select the receiving PHA. HUD solicited comments on whether a family should have the option to select the receiving PHA when more than one PHA has jurisdiction over the area to which the family wishes to move. Under the codified HCV program regulations, the initial PHA selects the receiving PHA for the porting family. The majority of commenters responding to this solicitation supported HUD's proposal to allow families to select the receiving PHA. Other commenters wrote that it would be burdensome for participants to have to review sometimes dozens of PHAs' information. These commenters suggested that HUD should maintain a national register of HCV program contacts for voucher participants, if the policy were to be implemented.

HUD Response: HUD determined that families should be given the option to select the receiving PHA when there is more than one PHA that has jurisdiction over the area where the family wishes to lease a unit. As stated in the proposed rule, giving such choice to families allows families to select receiving PHAs that best meet their needs. While HUD understands that in certain cases it may be burdensome for the family to select a receiving PHA, this change does not preclude a family from seeking assistance from the initial PHA in selecting the receiving PHA if the family so chooses. The final rule, therefore, provides that it will be the responsibility of the initial PHA to inform the family of the PHAs that serve the area and provide the family with the contact information for those PHAs. The initial PHA is not required to provide information of the options or services that each PHA may offer.

Accordingly, HUD is revising § 982.355(b) to clarify that the family has the option to select the receiving PHA.

VI. Other Public Comments

Comment: Limit liability for families to move with portability. Several commenters suggested that HUD adopt qualifying criteria (such as families moving for educational or employment opportunities, or families in flight of domestic violence) for moves under portability to ensure that families have a good reason to move. Other commenters suggested limiting the number of times a family may move to one move per year. Another commenter suggested that HUD limit the percentage of portability moves a receiving PHA must handle at a time.

HUD Response: There are provisions already in place that allow PHAs to manage family moves. For example, current regulation at § 982.314(c) provides that the PHA may establish policies that prohibit any move during the initial lease term, and prohibits more than one move by the family during any 1-year period, either within the PHA's jurisdiction or through portability. Moreover, receiving PHAs may always choose to absorb into its voucher program a participant who has moved under portability, provided that the receiving PHA has funding available to do so.

Comment: PHAs should be required to remind families they may move with portability. Some commenters suggested that PHAs should be required to actively remind families that they may move using the HCV portability process. Specifically, the commenters suggested that PHAs should be required to remind families at their annual recertification that they may move to other jurisdictions with continued voucher assistance.

HUD Response: HUD's regulation at § 982.301(a) and (b) provides for a family briefing and for an information packet to be given to the family when the family first participates in the voucher program. As provided in this final rule, every family must receive a briefing, and during such briefing, must be given information on how portability works. HUD finds this initial briefing to be sufficient and declines to require PHAs to remind families about portability at other times.

Comment: Provide additional support for victims of domestic violence. Commenters wrote that victims of domestic violence need additional support, beyond briefings. The commenters were supportive of the effectiveness of transitional housing and briefing residents on such services.

HUD Response: PHAs are required to offer victims of domestic violence, dating violence, sexual assault, and stalking the protections afforded under the Violence Against Women Act (VAWA) as reflected in HUD's regulations (24 CFR part 5, subpart L). These requirements include providing the victim with a notification of his or her rights under VAWA (24 CFR 5.2005). PHAs have the option and are encouraged to provide the victim with contact information for supportive services for victims of abuse. At a minimum, PHAs are encouraged to provide the number for the National Domestic Violence Hotline (1–800–799–SAFE (7233)) or the National Sexual Assault Hotline (1–800–656–HOPE (4673)) to victims. Victims who call these numbers may be able to locate supportive services in their area.

Comment: Exempt small PHAs from portability requirements. Several commenters wrote that portability should not apply to participants in small PHAs' programs. The commenters pointed out that a small PHA often has to pay a significantly higher cost for vouchers that port to higher-cost areas than the small PHA would pay for vouchers in their own jurisdiction. This higher cost limits the small PHA's ability to lease its own vouchers and serve families in its jurisdiction.

HUD Response: Since portability is authorized by statute, small PHAs cannot be exempted from allowing eligible families to move. Furthermore, HUD believes that portability is a key feature of the HCV program and families should not be denied the opportunity to move to other jurisdictions based on the size of the administering PHA. With regard to the cost impact, moves to higher-cost areas can impact the PHAs' ability to serve families from its waiting list. However, it is noted that these higher costs are taken into consideration in determining the PHA's renewal eligibility under the HCV program. Furthermore, the appropriations act typically provides that the higher costs of portability are an eligible category for set-aside funding that is used to adjust a PHA's renewal funding. Finally, as discussed in the preamble of this final rule, HUD has strived to clarify the portability process and thus reduce burden for PHAs.

Comment: Concerns about billing for portability vouchers. Several commenters wrote that the rule encourages billing the initial PHA, but should instead encourage absorption of vouchers by the receiving PHA. The commenters wrote that if a receiving PHA can receive 100 percent of its fee for a billed incoming voucher and only 80 percent of its fee for its own voucher, a PHA would have a strong incentive to bill rather than absorb the voucher. Several commenters also wrote that delays in payment by the initial PHA to a receiving PHA are a burden. They suggested that HUD should impose a firm deadline by which the initial PHA must pay its bills or establish other sanctions or tools for a PHA to use for chronic late-payers. Commenters also suggested that HUD develop a program to be used by all PHAs in tracking portability payments.

HUD Response: Prior to this final rule, a receiving PHA would be paid 80 percent of the initial PHA's administrative fees. The March 28, 2012, rule proposed and this final rule revises the administrative fee amount that can be billed to the initial PHA to the lesser of the amount currently provided in the codified regulation (80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's administrative fee). Under this rule, a receiving PHA cannot bill for more than the administrative fee it would otherwise receive for its own program, regardless of whether the initial PHA's administrative fee is higher than the receiving PHA's administrative fee. Prorations applicable to an initial PHA's administrative fees due to an appropriations act that does not fully fund administrative-fee eligibility will apply to those amounts. Therefore, the receiving PHA cannot bill and receive more in administrative fees for a portability voucher than it would receive for its own vouchers, unless both PHAs have agreed on a different amount of reimbursement.

As noted earlier in this preamble, HUD already imposes a firm deadline on portability billings and provides mechanisms that the receiving PHA may use in cases where the initial PHA fails to comply with the initial and subsequent billing due dates. (See Section 8 of Notice PIH 2012–42, Housing Choice Voucher Family Moves with Continued Assistance.)

Comment: HUD should present data to define portability success for voucher-assisted households. Commenters suggested that the use of data to define portability success would be beneficial for stakeholders to more fully comment on the proposed rule. A commenter suggested that American Community Survey data could be used, in conjunction with HUD data, to provide an overlay of assisted and unassisted households to determine at each income quintile, how many households move and how often they move within their existing city and county, outside of their county, or outside of their State. The commenter further wrote that such an analysis may help show that a high percentage of mobility moves results in

voucher-assisted households relocating to neighborhoods of opportunity or deconcentrated neighborhoods.

HUD Response: HUD believes that portability success can be defined in a multitude of ways and is unclear how the analysis described by the commenter would successfully indicate the effects of portability on families. While HUD appreciates the suggestion for additional research into portability success, the intent of this final rule is to simplify the administration of portability issues within the voucher program. HUD believes this analysis is not necessary for successful implementation of the proposed reforms.

VII. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

This final rule amends HUD's regulations governing portability in the HCV program. These regulatory changes streamline the portability process and enable initial and receiving PHAs to better serve families and expand housing opportunities. HUD's analysis determined that these regulatory amendments will not have an economic effect of greater than $100 million but would yield certain nontangible benefits. The findings of HUD's analysis are summarized below, and addressed in more detail in the accompanying regulatory analysis:

1. *Benefits of final rule.* The HCV portability policy helps ensure that families have the opportunity to relocate in order to pursue increased or new employment opportunities or to gain access to preferred schools for their children. An efficient portability process also helps ensure that victims of domestic violence and stalking have access to the resources necessary to relocate to a safe, stable home away from an abuser.

Moves to areas with relatively low concentrations of neighborhood poverty have important benefits to housing choice voucher families. Research from HUD's Moving to Opportunity (MTO) demonstration [3] showed that moving from housing developments in high-poverty neighborhoods to private housing in lower-poverty neighborhoods had strong positive effects on girls' and adults' mental health, as well as on adults' physical health. Under the *Gautreaux* desegregation program in Chicago,[4] children and adults who moved with HCV assistance to middle-income suburbs appear to have experienced educational gains compared to families that remained in urban or higher-poverty neighborhoods. It is expected that the rule will remove potential barriers to mobility and will increase the number of families that may move to areas of opportunities. Some research indicates that families often use their vouchers to move to better opportunities, including employment opportunities.

2. *Costs of rule.* HUD expects that portability billing arrangements in this rule will place only a slightly additional administrative burden on PHAs. Portability may add to the cost of the HCV program through higher HAP costs, but the fiscal year (FY) 2015 appropriations act provides a set-aside of up to $120 million from HCV renewal funds to allow HUD to provide PHAs with additional renewal funding under certain circumstances. One of the eligible categories permitted under the appropriations act is for increased costs resulting from unforeseen circumstances and portability. HUD is in the process of receiving the FY 2015 set-aside applications; however, an average of $23 million has been found eligible in the past for PHAs for portability adjustments.

4. *Administrative Fee.* Prior to this rule, for a voucher in a portability billing arrangement between the initial PHA and receiving PHA, the initial PHA had to pay the receiving PHA 80 percent of its administrative fee for each month that the family received assistance at the receiving PHA, unless the PHAs mutually agreed to a different billing amount. Removal of potential barriers to mobility is expected to increase the number of portability vouchers and, thus, increase the amount of administrative fee transfers between PHAs.

The final rule would set the maximum amount that the initial PHA is required to pay at 100 percent of the receiving PHA's administrative fee rate. In other words, the initial PHA would reimburse the receiving PHA for the lesser of: (1) 80 percent of the initial PHA's ongoing fee or (2) the full amount of the receiving PHA's administrative fee. This change eliminates the incentive for a receiving PHA with a lower administrative fee to bill an initial PHA with a higher administrative fee in order to receive a higher administrative fee than it would normally earn from HUD. This action should reduce portability billings for those PHAs for whom 80 percent of the initial PHA's fee is more than 100 percent of their own administrative fee. For example, assume that a receiving PHA's administrative fee is $60. Prior to this rule, if a family moves to the receiving PHA's jurisdiction from an initial PHA that receives $100 in administrative fees for a housing voucher, the receiving PHA may bill the initial PHA for $80, which is $20 more than the PHA would earn if it simply absorbed the voucher. Under the final rule, the receiving PHA will receive $60 regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program.

The full economic analysis is available for review at *www.regulations.gov.* The docket file for this rule is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

[3] See: *http://www.huduser.org/publications/pdf/MTOFHD_fullreport_v2.pdf.*

[4] The *Gatreaux* desegregation program is a housing desegregation program initiated by court order. In a consent decree, the court ordered the Chicago Housing Authority to provide scattered-site housing for public housing residents residing in poverty concentrated areas.

Information Collection Requirements

The information collection requirements in the proposed rule were submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The information collection requirements of this rule was assigned this OMB Control Number 2577–0169.

Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This final rule does not impose any federal mandates on any State, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule is solely concerned with the portability feature of the voucher program. There currently are approximately 739 small PHAs (*i.e.,* PHAs with less than 250 public housing units or vouchers) [5] that will be subject to the rule. Since portability is authorized by statute, small PHAs administering the HCV program cannot be exempt from allowing eligible families to move, and HUD has strived to reduce burden for all PHAs. Therefore, while this final rule will impact these PHAs, the impact will not be significant. As stated previously in this preamble, through the amendments to the HCV regulations provided in this rule, HUD will reduce the administrative burden of portability for both PHAs and families, reduce portability billing arrangements between PHAs, and ensure maximum family choice in locating suitable housing. HUD also removed the proposed requirement for mandatory absorption of portability vouchers by the receiving PHA that was in the proposed rule. Through this final rule, HUD strives to clarify the portability process and reduce administrative burden for all PHAs, large or small. As explained more fully above in the ''Executive Order 12866 and 13563'' section of this preamble, the benefits of the regulatory changes will largely outweigh the administrative and compliance costs to PHAs. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects in 24 CFR Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, HUD amends 24 CFR part 982, as follows:

Note: Remainder of notice omitted. For text of 24 CFR Part 982, see CFR References section of this coursebook

[5] The number of 739 PHAs includes HCV-only PHAs and PHAs with combined HCV-public housing portfolios. This number does not include public housing-only PHAs, which is the largest category of small PHAs but which are not affected by this rule.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

SEP 15 2015

Dear PHA Executive Director,

HUD is providing the guidance below in response to several issues raised after publication of the final portability rule (80 FR 50564, published August 20, 2015). Specifically, HUD is addressing the impact on billing. HUD is in the process of revising PIH Notice 2012-42 and form HUD-52665, and the guidance provided in this letter will be incorporated into the revised notice and form.

A technical correction to the final portability rule was published in the Federal Register on September 1, 2015. The technical correction incorporates two provisions that were addressed in the preamble to the final portability rule but were inadvertently omitted from the regulatory text. You may find more information related to portability, including a copy of the rule and technical correction, and access to the final portability rule training webcast on HUD's website at the following address:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv.

Receiving PHA Voucher Term:

The final portability rule provides that the receiving Public Housing Agency's (PHA's) voucher cannot expire earlier than 30 calendar days from the expiration date of the initial PHA's voucher term. For example, if the expiration date on the initial PHA's voucher is 9/30/2015, the receiving PHA's voucher may not expire before 10/30/2015.

While PIH Notice 2012-42 provides that the initial billing submission must be completed and mailed by the receiving PHA within 10 working days of the HAP contract execution but with sufficient time so that it is received by the initial PHA no later than 60 days following the expiration date of the initial PHA's voucher, the billing deadline is now extended to 90 days, in accordance with the final portability rule provision described above.

Therefore, the initial billing submission must be completed and mailed by the receiving PHA within 10 working days of the HAP contract execution but with sufficient time so that it is received by the initial PHA no later than 90 days following the expiration date of the initial PHA's voucher. In the example in the first paragraph, the billing deadline per the initial PHA's voucher expiration date is 12/30/15.

Mandatory Suspension of the Term of the Voucher:

HUD is aware of the potential impact mandatory suspension of the voucher term may have on the billing deadline. HUD will provide further guidance through revisions to PIH Notice 2012-42. In the meantime, the billing deadline will continue to operate as described in the section above.

Administrative Fees:

Receiving PHAs whose billed administrative fee will change as a result of publication of the final portability rule must send an updated form HUD-52665 to the initial PHA no later than October 30, 2015. In the event of a late billing submission, initial PHAs may contact their local HUD field office for assistance.

Completing Form HUD-52665: to reflect changes in the billing amount resulting from changes in the billed administrative fee amount, receiving PHAs must complete part II-B, line 9. Enter the revised administrative fee amount on line 9b.

The administrative fee amount will be the lesser of 80% of the initial PHA's prorated column B administrative fee rate (as provided by the initial PHA under Part I, line 10 of form HUD-52665) or 100% of the receiving PHA's prorated column B administrative fee rate. Note that items 9c and 9h will automatically populate once you enter the information on lines 9a and 9b.

HUD encourages PHAs to work cooperatively in processing these changes, so that any potential hardship on participants or unnecessary administrative burden is avoided. Thank you for your continued support of the HCV program. If you have questions about this letter or the final portability rule, you may email portability@hud.gov.

Sincerely,

for Becky Primeaux

Amy Ginger
Director
Office if Housing Voucher Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Public and Indian Housing

Special Attention of:
Public Housing Agency Directors
Public Housing Hub Offices Directors
Public Housing Field Office Directors
Resident Management Corporations
All Multifamily Hub Directors
All Multifamily Program Center Directors

Notice PIH 2015-19

Issued: November 2, 2015

Expires: This notice remains in effect until amended, superseded, or rescinded.

Subject: Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

1. Background

For the past five years HUD has been an active member of the Federal Interagency Reentry Council. This Council, made up of more than 23 Federal Agencies, meets on a regular basis to act on issues that affect the lives of those released from incarceration. An important aspect of the Reentry Council's work has been to have each Federal Agency identify and address "collateral consequences" that individuals and their families may face because they or a family member has been incarcerated or has had any involvement with the criminal justice system.[1]

In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities (PHAs) across the country emphasizing the importance of providing "second chances" for formerly incarcerated individuals.[2] Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multifamily properties ("owners") to do the same and reiterated HUD's goal of "helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." HUD has also previously stressed the troubling relationship between housing barriers for individuals with criminal records and homelessness, stating that "the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn

[1] For more information on the initiatives of the Council members, see https://csgjusticecenter.org/nrrc/projects/firc/snapshots/.

[2] Letter from Shaun Donovan, Secretary, United States Department of Housing and Urban Development, to Public Housing Authority Executive Directors (June 17, 2011), available at http://usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf.

increases the risk of subsequent re-incarceration."[3]

At a time when an estimated 100 million (or nearly one in three) Americans have some type of criminal record,[4] HUD remains committed to the goal of providing second chances to formerly incarcerated individuals where appropriate and to ensuring that individuals are not denied access to HUD-subsidized housing on the basis of inaccurate, incomplete, or otherwise unreliable evidence of past criminal conduct. With those aims, and in response to requests from housing providers and prospective tenants for guidance from HUD regarding the proper use of criminal records in housing decisions, HUD is issuing this notice.

2. Purpose

The purpose of this Notice is to inform PHAs and owners of other federally-assisted housing that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants, to remind PHAs and owners that HUD does not require their adoption of "One Strike" policies, and to remind them of their obligation to safeguard the due process rights of applicants and tenants.

The Notice also reminds PHAs and owners of their obligation to ensure that any admissions and occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105.

Finally, the Notice provides best practices and peer examples for PHAs and owners to review.

3. HUD Does Not Require PHAs and Owners to Adopt "One Strike" Policies

HUD does not require that PHAs and owners adopt or enforce so-called "one-strike" rules that deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity in violation of their lease. Instead, in most cases, PHAs and owners have discretion to decide whether or not to deny admission to an applicant with certain types of criminal history, or terminate assistance or evict a household if a tenant, household member, or guest engages in certain drug-related or certain other criminal activity on or off the premises (in the case of public housing) or on or near the premises (in the case of Section 8 programs).[5]

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[3] Guidance on Housing Individuals and Families Experiencing Homelessness Though the Public Housing and Housing Choice Voucher Programs, HUD PIH Notice 2013-15 (HA), 8 (June 10, 2013), available at http://1.usa.gov/1afx3VY.

[4] Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems*, 2012, 3 (Jan. 2014), available at https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf.

[5] HUD regulations outline the limited instances where denial of admission or termination of assistance is required in the public housing, Housing Choice Voucher and Section 8 multifamily programs. See 24 CFR Part 5, subpart I; Part 960, subpart B; Part 966, subpart A; Part 982, subpart L.

In deciding whether to exercise their discretion to admit or retain an individual or household that has engaged in criminal activity, PHAs and owners may consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to: the seriousness of the offending action; the effect that eviction of the entire household would have on family members not involved in the criminal activity; and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity. Additionally, when specifically considering whether to deny admission or terminate assistance or tenancy for illegal drug use by a household member who is no longer engaged in such activity, a PHA or owner may consider whether the household member is participating in or has successfully completed a drug rehabilitation program, or has otherwise been rehabilitated successfully.[6]

4. An Arrest is Not Evidence of Criminal Activity that Can Support an Adverse Admission, Termination, or Eviction Decision

Subject to limitations imposed by the Fair Housing Act and other civil rights requirements,[7] PHAs and owners generally retain broad discretion in setting admission, termination of assistance, and eviction policies for their programs and properties. Even so, such policies must ensure that adverse housing decisions based upon criminal activity are supported by sufficient evidence that the individual engaged in such activity. Specifically, before a PHA or owner denies admission to, terminates the assistance of, or evicts an individual or household on the basis of criminal activity by a household member or guest, the PHA or owner must determine that the relevant individual engaged in such activity.

HUD has reviewed relevant case law and determined that the fact that an individual was arrested is not evidence that he or she has engaged in criminal activity. Accordingly, the fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance, or eviction.

An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. In many cases, arrests do not result in criminal charges, and even where they do, such charges can be and often are dismissed or the person is not convicted of the crime alleged. In fact, in the 75 largest counties in the country, approximately one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal.[8]

Moreover, arrest records are often inaccurate or incomplete (e.g., by failing to indicate whether

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[6] See 24 CFR 5.852, 960.203(d), 966.4(l)(5)(vii), 982.310(h) (describing PHA and owner discretion in screening and evictions actions related to criminal activity).

[7] See 24 CFR 5.852(e) ("admission and eviction decisions must be consistent with fair housing and equal opportunity provisions of [24 CFR 5.105]"); see also 24 CFR 960.202(c)(3), 966.6(l)(vii)(F), 982.310(h)(4), 982.552(c)(2)(v).

[8] Brian A. Reaves, Bureau of Justice Statistics, U.S. Dep't of Justice, Felony Defendants in Large Urban Counties, 2009, at 22, Table 21 (2013), http://www.bjs.gov/content/pub/pdf/fdluc09.pdf.

the individual was prosecuted, convicted, or acquitted), such that reliance on arrests not resulting in conviction as the basis for denying applicants or terminating the assistance or tenancy of a household or household member may result in unwarranted denials of admission to or eviction from federally subsidized housing.[9]

With respect to the Section 8 tenant-based and moderate rehabilitation programs, HUD regulations specifically provide that termination of assistance for criminal activity must be based on a "preponderance of the evidence" that the tenant, or other household member, or guest engaged in such activity. For public housing as well, applicants or tenants may not be denied admission or evicted based on mere suspicion that they, a household member, or guest has engaged in criminal activity. Where PHAs or owners seek eviction, they should be prepared to persuade a court that the eviction is justified based on sufficient evidence of criminal activity in violation of the lease.

For these reasons, a PHA or owner may not base a determination that an applicant or household engaged in criminal activity warranting denial of admission, termination of assistance, or eviction on a record of arrest(s).

Although a record of arrest(s) may not be used to deny a housing opportunity, PHAs and owners may make an adverse housing decision based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the PHA or owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions.

An arrest record can trigger an inquiry into whether there is sufficient evidence for a PHA or owner to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. PHAs and owners can utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct in fact occurred.

5. Protecting the Due Process Rights of Applicants and Tenants

Federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV applicants with notification and the opportunity to dispute the accuracy and relevance of a criminal record *before* admission or assistance is denied on the basis of such record. Public housing and Section 8 applicants also must be afforded the right to request an informal hearing

[9] See, e.g., U.S. Dep't of Justice, *The Attorney General's Report on Criminal History Background Checks* at 3, 17 (June 2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf (reporting that the FBI's Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and "the most comprehensive single source of criminal history information in the United States," is "still missing final disposition information for approximately 50 percent of its records").

or review *after* an application for housing assistance is denied.

As with admissions decisions, federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV tenants with notice and the opportunity to dispute the accuracy and relevance of a criminal record before they evict or terminate the tenant's assistance on the basis of such record. Moreover, PHAs and owners may only terminate the tenancy or assistance of a public housing or project-based Section 8 tenant through either a judicial action in state or local court, or, in the case of a Section 8 HCV participant, through an administrative grievance hearing before an impartial hearing officer appointed by the PHA. In either case, the tenant must be afforded the basic elements of due process, including the right to be represented by counsel, to question witnesses, and to refute any evidence presented by the PHA or owner.

6. Civil Rights Requirements and Consistent Application of Procedures and Standards

PHAs and owners must ensure that any screening, eviction, or termination of assistance policies and procedures comply with all applicable civil rights requirements contained in in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105. To that end, a PHA or owner should institute protocols that assure that its procedures and standards are consistently applied and that decisions are made based on accurate information. Inconsistent application of standards or decisions based on partial or inaccurate information may result in liability under federal civil rights laws. See, e.g., Allen v. Muriello, 217 F. 3rd 517 (7th Cir. 2000) (allegation that African American applicant for federal housing assistance was given less opportunity to contest erroneous record of criminal activity than two similarly situated white applicants established a prima facie case of discrimination under the Fair Housing Act).

7. Best Practices and Peer Examples

PHAs and owners are encouraged to adopt admissions and continuing occupancy policies based on the best practices highlighted below to guard against unwarranted denial of assistance, termination from program participation, or eviction from federally assisted housing. These best practices incorporate clear standards for using information about criminal history in an admission or continuing participation decision. PHAs and owners are also encouraged to read the Shriver Report entitled "When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing."

Examples of PHA Best Practices on the Use of Criminal Records

A. Many PHAs have adopted written admission policies that limit their criminal record screening to assessments of conviction records.

Examples of PHA Best Practices on Screening for Criminal Activity

A. Some PHAs allow public housing and Housing Choice Voucher applicants to address and present mitigating circumstances regarding criminal backgrounds prior to admission decisions. In some cases, doing so has produced cost savings due to fewer decision appeals.

B. Some PHAs have adopted lookback periods that limit what criminal conduct is considered during the screening process based on when the conduct occurred and/or the type of conduct. For example, when screening HCV applicants, one PHA has adopted a twelve-month lookback period for drug-related criminal activity and a twenty-four month lookback period for violent and other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

C. Some PHAs have adopted admission policies that enumerate the specific factors that will be considered when the PHA evaluates an individual's criminal record, including:

a. Whether the applicant's offense bears a relationship to the safety and security of other residents;
b. The level of violence, if any, of the offense for which the applicant was convicted;
c. Length of time since the conviction;
d. The number of convictions that appear on the applicant's criminal history;
e. If the applicant is now in recovery for an addiction, whether the applicant was under the influence of alcohol or illegal drugs at the time of the offense; and
f. Any rehabilitation efforts that the applicant has undertaken since the time of conviction.

D. Some PHAs have implemented pilot programs that allow formerly incarcerated persons who have been released from prison within the past two or three years to be added to an existing voucher of a family member if all involved agree to participate and the formerly incarcerated individual agrees to six months to one year of supportive services with nonprofit partners.

E. One PHA has hired an offender reentry housing specialist who collaborates with a formerly incarcerated individual's parole officer, landlord, and treatment provider to ensure successful reentry into the community.

Example of PHA Best Practices on Evicting and Terminating Assistance for Criminal Activity

A. Some PHAs have adopted policies that list the circumstances that will be considered prior to a termination of the lease on the basis of criminal activity, including:

a. The seriousness of the offending action, especially with respect to how it would affect other residents;
b. The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking;
c. The effects that the eviction will have on other family members who were not involved in the action or failure to act;

d. The effect on the community of the termination, or of the PHA's failure to terminate the tenancy;
e. The effect of the PHA's decision on the integrity of the public housing program;
f. The demand for housing by eligible families who will adhere to lease responsibilities;
g. The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action; and
h. The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.

8. Paperwork Reduction Act

The information collection requirements contained in this Notice were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3501-3520). Compliance and Enforcement are covered by OMB controls numbers 2502-0205, 2577-0232, 2577-0220, 2577-0230, and 2577 - 0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

9. Contact Information

If you have questions regarding this Notice, please contact your local HUD Field Office.

/s/
Lourdes Castro Ramirez
Principal Deputy Assistant Secretary for
Public and Indian Housing

/s/
Edward Golding
Principal Deputy Assistant Secretary for
Housing

FAQs: Excluding the Use of Arrest Records in Housing Decisions

These FAQs are issued by HUD's Office of Public and Indian Housing ("PIH"), Office of Housing, and Office of General Counsel to address questions raised by *Notice PIH 2015-19 / H 2015-10,* which was issued on November 2, 2015, and is entitled *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*.

These FAQs are intended as a supplemental resource to *Notice PIH 2015-19 / H 2015-10*.

Q1: What does *Notice PIH 2015-19 / H 2015-10* do?

A1: The *Notice* clarifies that the fact that someone has been arrested does not itself prove that the person has engaged in criminal activity. As a result, the fact of an arrest is not itself an acceptable reason for denying that person admission, terminating their assistance, or evicting tenants in public or federally-assisted housing.

The *Notice* also reminds PHAs and owners of HUD-assisted multifamily properties ("owners") that HUD does not require the adoption of "one-strike" policies and that PHAs and owners have an obligation to safeguard the due process and civil rights of applicants and tenants.

In addition, the *Notice* provides some best practices for PHAs and owners interested in revising their admissions and occupancy policies to improve housing opportunities for persons who, despite past criminal activity, do not pose a threat to the health or safety of residents or staff.

Q2: Why is the fact of an arrest not itself a permissible basis for making a housing decision?

A2: The fact that someone was arrested means only that the person was suspected of having committed an offense. Further investigation may have shown that no criminal activity actually occurred, or that the arrested individual did not in fact commit an offense.

Consequently, the fact of the arrest itself does not prove that a person engaged in disqualifying criminal activity, poses a threat, or has otherwise violated admission standards or lease terms relating to criminal activity.

Q3: Does *Notice PIH 2015-19 / H 2015-10* completely exclude the review of arrest records in housing decisions?

A3: No. Although the fact that an individual was arrested is not grounds to deny a housing opportunity, a record of an arrest might properly trigger an inquiry by a PHA or owner into whether a person actually engaged in disqualifying criminal activity. As part of such an inquiry, a PHA or owner may continue to obtain and review the police report, record of disposition of any criminal charges, and other evidence associated with the arrest to inform its eligibility determination.

Q4: If an individual has an arrest history, what kind of evidence of criminal activity is needed before disqualifying that person from housing assistance?

A4: In determining whether a person who was arrested for disqualifying criminal activity actually engaged in such activity, PHAs and owners may consider, among other things: police reports that detail the circumstances of the arrest; statements made by witnesses or by the applicant or tenant that are not part of the police report; whether formal criminal charges were filed; whether any charges were ultimately withdrawn, abandoned, dismissed, or resulted in an acquittal; and any other evidence relevant to whether the applicant or tenant engaged in the disqualifying criminal activity. The best evidence of a person's involvement in criminal activity is an official record of the person's conviction in a court of law for disqualifying criminal activity.

Q5: In considering evidence of a person's criminal activity, what is the threshold that must be met before a PHA or owner *may* disqualify that person from housing assistance?

A5: Public housing and Section 8 applicants may not be denied admission or assistance based on the mere suspicion that they or a household member engaged in disqualifying criminal activity. There must be enough evidence to be able to reasonably conclude that the applicant engaged in criminal activity. Thus, the fact that an individual was arrested is not an adequate basis for disqualifying an applicant for admission or assistance.

When terminating assistance for participants of Section 8 tenant-based and moderate rehabilitation programs due to disqualifying criminal activity, HUD regulations specifically provide that disqualifying criminal activity by a tenant, other household member, or guest must be demonstrated by a "preponderance of the evidence." In other words, when taking all the evidence together and considering its reliability or unreliability, it must be more likely than not that the person in question engaged in the disqualifying criminal activity. The same preponderance of the evidence standard applies to public housing evictions as well.

As a reminder, only in limited and specific cases of criminal activity do HUD statutes and regulations *require* denial of admission or termination of assistance (and in only two cases—where someone has been convicted of producing methamphetamine in federally-assisted housing or must register as a lifetime sex offender—is someone permanently barred). In all other cases, PHAs and owners have discretion to consider any mitigating circumstances in making admission and eviction decisions.

Q6: What is an example of an admissions policy that complies with Section 4 of *Notice PIH 2015-19 / H 2015-10*?

A6: An admissions policy that complies with Section 4 of the *Notice* and recognizes the interests of applicants who need access to affordable housing while guarding the safety interests of current residents might include the following statement:

"The fact that an applicant or tenant was arrested for a disqualifying offense shall not be treated or regarded as proof that the applicant or tenant engaged in disqualifying criminal activity. The arrest may, however, trigger an investigation to determine whether the applicant or tenant actually engaged in disqualifying criminal activity. As part of its investigation, [the PHA or owner] may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider any statements made by witnesses or the applicant or tenant not included in the police report; whether criminal charges were filed; whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal; and any other evidence relevant to determining whether or not the applicant or tenant engaged in disqualifying activity."

FAQs for *Notice PIH 2015-19 / H 2015-10*

Q7: Does *Notice PIH 2015-19* require a PHA to rewrite its (1) Admissions and Continued Occupancy Policies (ACOP), or (2) Section 8 Administrative Plan (Admin Plan) if the ACOP or Admin Plan does not include the same language used in the previous answer's example?

A7: Maybe. All PHAs must comply with *Notice PIH 2015-19*. PHAs should therefore review their ACOPs and Admin Plans and revise them where a policy treats the fact that someone was arrested as a reason to deny admission, terminate assistance, or evict tenants in public or federally-assisted housing.

At the same time, a PHA is not required to use the same language used in the previous example to comply with the *Notice*. Where a PHA's ACOP and Admin Plan are completely consistent with the example policy set forth in the previous answer and do not permit relying on the fact of an arrest (or arrests) to prove disqualifying criminal activity, it may be that no revisions are required.

HUD encourages PHAs to revise their ACOP and Admin Plans as they relate to criminal records in order to better facilitate access to HUD-assisted housing for applicants who, despite their criminal history, do not pose a threat to the health or safety of residents or staff.

Q8: If, during an applicant's admissions screening process, the applicant is arrested for violent or other disqualifying criminal activity, must a PHA or owner wait until the arrest disposition to determine the applicant's eligibility for housing?

A8: No. While it may be advisable to wait until the arrest disposition—especially if the disposition is imminent—PHAs and owners have discretion to go ahead and use the available evidence to make an eligibility determination according to the standards in the applicable written admissions policies of the PHA or owner.

FAQs for *Notice PIH 2015-19 / H 2015-10*

Q9: Must a PHA or owner provide an applicant with notice and the opportunity to dispute the accuracy or relevance of a criminal record *before* denying admission on the basis of that record?

A9: Yes. Before a PHA denies admission to the public housing or Section 8 program on the basis of a criminal record, the PHA must notify the applicant of the proposed decision and provide the applicant and the subject of the record with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. In addition, public housing and Section 8 applicants have the right to request an informal review of the decision after their application has been denied. For further guidance, please consult 24 C.F.R. §§ 960.204(c), 960.208(a), 982.553(d), 982.554.

Similarly, when owners make the decision to reject an applicant on the basis of a criminal record, the owner must provide the applicant with a written rejection notice. This notice must state the reason for the rejection, advise of the applicant's right to respond to the owner in writing or to request a meeting within 14 days to dispute the rejection, and advise that persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process. For further guidance, please consult HUD Handbook 4350.3, REV-1, paragraphs 4–9.

Q10: May PHAs or owners contact HUD if they have questions about *Notice PIH 2015-19 / H 2015-10*?

A10: Yes. If assistance is needed, PHAs and owners can contact their local field office, which can put them in touch with HUD regional counsel to answer any questions about the *Notice*.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

Office of Housing

Office of Public and Indian Housing

Special Attention of:	NOTICE: PIH 2015-21
Multifamily Regional Center Directors Multifamily Hub Directors Multifamily Program Center Directors Supervisory Housing Project Managers Rural Housing Service (RHS) Directors Account Executives Contract Administrators Owners, Management Agents Administering Multifamily Housing Assistance Programs Public Housing Agency Directors Section 8 and Public Housing Administrators HUD Directors of Public Housing PIH Program Center Coordinators Public Housing Division Directors	Issued: November 18, 2015 Expires: This notice remains in effect until amended, revoked, or superseded. Cross References: Fiscal Year 2012 Appropriations; Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance (71 FR 18146, appendix A); 24 CFR 5.609(b)(9); 24 CFR 5.609(c)(6)

Subject: Amendment to the Definition of Tuition

I. Purpose

This notice serves to amend the definition of tuition found in the *Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance* (71 FR 18146, appendix A) which is used in both Multifamily Housing and Public and Indian Housing (PIH) programs. The *Supplementary Guidance* states that "tuition shall have the meaning given this term by the institution of higher education in which the student is enrolled[1]." To promote consistency across HUD's programs and provide PHAs and O/As with a standard definition of tuition and fees, HUD is aligning with the Department of Education's definition of tuition and fees. With the issuance of this notice, tuition will now be defined in the same manner in which the Department of Education defines "tuition and fees." Section IV of this Notice provides details of the amended definition.

This Notice is effective upon publication.

[1] The term "tuition" is defined in the *Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance* (71 FR 18146, appendix A). Multifamily Housing programs define the term tuition in HUD Handbook 4350.3 REV-1.

II. Background

HUD has become aware of many institutions of higher education moving from a traditional tuition-only structure to a new tuition and fee structure. Fees often include, but are not limited to, student service fees, student association fees, student activities fees, and laboratory fees. HUD believes the inclusion of many of these required fees within the definition of tuition will increase opportunities for its participants to further their education.

This position was reinforced with the inclusion of the language (in bold below) of section 215(b) in the Fiscal Year 2012 appropriations. The FY 2012 appropriations require that the amount of any financial assistance an individual receives in excess of amounts received for tuition and "other required fees and charges" be considered when determining an applicant's or participant's annual income. For purposes of section 8 programs only see section 215 (b) below.

> SEC. 215. (b) For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (**in excess of amounts received for tuition and any other required fees and charges**) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.

III. Applicability

All provisions of this notice apply to owners and management agents (O/As) and public housing authorities (PHAs) administering the following covered programs under section 8 of the United States Housing Act of 1937:

A. Project-based Section 8
    1. New Construction
    2. State Agency Financed
    3. Substantial Rehabilitation
    4. Section 202/8
    5. Rural Housing Services Section 515/8
    6. Loan Management Set-Aside (LMSA)
    7. Property Disposition Set-Aside (PDSA)
B. Section 8 Housing Choice Voucher (including Project-Based Voucher and Project-Based Certificate)

C. Moderate Rehabilitation

In programs, other than HUD's section 8 programs, that follow the definition of annual income in 24 CFR part 5 (e.g. the Public Housing program), PHAs and other grantees may continue to exclude the full amount of student financial assistance from a person's annual income in accordance with 24 CFR § 5.609(c)(6).

The amended definition of tuition in section IV of this notice applies to all HUD programs. The income determination (section V) and verification requirements (section VI) may also apply to other HUD programs that follow 24 CFR part 5. Administrators and participants in those programs should contact the appropriate HUD program office overseeing your program if you have questions concerning the implementation of HUD's amended definition of tuition or the income determination and verification requirements for your program.

IV. Amended Definition of Tuition as Defined by the Department of Education

Prior to this Notice, when determining an applicant's or participant's income, HUD's definition of tuition required PHAs and O/As to defer to the definition of tuition used by the institution of higher education in which the student is enrolled. The definition can vary across institutions and academic programs. With the inclusion of "other required fees and charges" being added to the definition of tuition, PHAs and O/As may experience difficulty in determining income.

The Department of Education defines tuition as the amount of money charged to students for instructional services which may be charged per term, per course, or per credit. The Department of Education further defines tuition and fees as the amount of tuition and required fees covering a full academic year most frequently charged to students.[2] These values represent what a typical student would be charged and may not be the same for all students at an institution. If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an entire academic year is used to estimate average tuition. Required fees include all fixed sum charges that are required of a large proportion of all students. The student who does not pay the charges is an exception.[3] Examples of required fees include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).

Expenses related to attending an institution of higher education must **not** be included as tuition. Examples of these expenses include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed sum charges.

[2] *See*, Integrated Postsecondary Education Data System Glossary for definition of "tuition" and "tuition and fees." Retrieved February 5, 2013, from http://nces.ed.gov/ipeds/glossary/?charindex=T
[3] *Id.*

V. Income Determination

In implementing the amended definition of tuition, for section 8 programs only, O/As and PHAs must include amounts of financial assistance an individual receives in excess of tuition and other required fees and charges when determining annual income in accordance with 24 CFR 5.609(b)(9).

Under other programs, such as the Public Housing program, the full amount of financial assistance a student receives while participating in the program continues to be excluded from the program participant's annual income pursuant to 24 CFR § 5.609(c)(6).

Example:
Kim, a 22 year old, married, participant in a Section 8 program is enrolled in a nursing program at her local community college. She is receiving $7,000 in financial assistance to cover the full cost of tuition and fees of $6,000 for the academic year. The $6,000 includes:

- $2,500 in tuition per semester (total $5,000) *plus*
- $500 in individual fees (total $1,000)—athletic fee, writing laboratory fee, student center fee, science laboratory fee, technology fee—charged to every student per semester.

In this example, the excess $1,000 ($7,000 - $6,000) Kim received in financial assistance will be included in her annual income in accordance with 24 CFR 5.609(b)(9).

Under HUD's previous definition of tuition, Kim's housing authority might have considered her financial assistance to be in excess of $2,000 if her college's definition of tuition did not include fees. Under HUD's new definition, Kim's housing authority will determine her excess financial assistance to be $1,000 rather than $2,000 because the required fees and charges are included with tuition.

Using the same example, if Kim was a participant in the Public Housing program, the full amount of financial assistance she received would be excluded from her income in accordance with 24 CFR § 5.609(c)(6).

VI. Verification of Tuition and Fees

O/As and PHAs must verify the amounts of tuition and required fees charged by the school when determining annual income. O/As and PHAs may wish to verify those amounts using the student's bill or account statement (including an online account statement) as provided by the school's bursar's office, or by contacting the bursar's office directly. It is also recommended that you visit the school's website as many institutions of higher education provide an itemized list covering tuition and fees that are charged to a majority of their students on their websites.

VII. Contact Information

For those administering or participating in programs administered by the Office of Multifamily Housing, please contact Kate Brennan via email, catherine.m.brennan@hud.gov should you have questions regarding this Notice. For those administering or participating in PIH programs, you may contact your local HUD Field Office of Public Housing. Persons with hearing or speech impairments may access their field office via TTY by calling the Federal Information Relay Service at (800) 877-8339.

/s/

Lourdes Castro Ramirez,
Principal Deputy Assistant Secretary
for Public and Indian Housing

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 880, 884, 886, 891, 903, 960, 966, 982, 983, 990

[Docket No. FR 5743–F–03]

RIN 2577–AC92

Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Final rule.

SUMMARY: The Department of Housing and Urban Development Appropriations Act, 2014 (2014 Appropriations Act), made several changes to the United States Housing Act of 1937 (1937 Act). Section 243 of the 2014 Appropriations Act authorized HUD to implement these changes through notice, followed by notice-and-comment rulemaking. Notices implementing the changes were published on May 19, 2014, and June 25, 2014. HUD issued a proposed rule on January 6, 2015, to codify these changes in regulation. In addition, the January 2015 rule proposed changes to streamline regulatory requirements pertaining to certain elements of the Housing Choice Voucher (HCV), Public Housing (PH), and various multifamily housing (MFH) rental assistance programs; to reduce the administrative burden on public housing agencies (PHAs) and MFH owners; and to align, where feasible, requirements across programs, including the Housing Opportunities for Persons with AIDS (HOPWA) and HOME Investment Partnerships (HOME), which are administered by HUD's Office of Community Planning and Development (CPD). HUD also issued an interim rule on September 8, 2015, implementing changes to flat rents in the Public Housing program made by the Department of Housing and Urban Development Appropriations Act, 2015 (2015 Appropriations Act).

This final rule makes changes to the regulatory text as presented in the January 2015 proposed rule, including additional changes in response to public comment as well as further consideration by HUD of changes proposed in January 2015, and finalizes the regulatory changes contained in the September 2015 interim rule.

DATES: *Effective Date:* April 7, 2016.

FOR FURTHER INFORMATION CONTACT: For questions regarding programs operated by HUD's Office of Community Planning and Development, contact Henrietta Owusu, Director, Program Policy Division, Office of Affordable Housing Programs, at 202–402–4998. For the HCV program, contact Becky Primeaux, Director, Housing Voucher Management and Operations Division, at 202–402–6050. For questions regarding the Multifamily Housing programs, contact Katherine Nzive, Director, Program Administration Office, Asset Management and Portfolio Oversight, at 202–708–3000. For the Public Housing program, contact Todd Thomas, Program Analyst, Public Housing Management and Occupancy Division, at 678–732–2056. None of the phone numbers included is toll-free. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Any of the above-listed contacts may also be reached via postal mail at the following address: Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

The 2014 Appropriations Act made changes to certain provisions of the 1937 Act, such as allowing for biennial physical inspections of certain assisted properties and permitting alternative inspection methods to be used in certain circumstances, codifying in statute the definition of ''extremely low-income,'' and capping utility allowances at the lesser of the unit size on the voucher or the size of the unit leased by the family. These changes were implemented by notice;[1] a proposed rule to codify the changes in regulation was published on January 6, 2015, at 80 FR 423.

In addition, HUD has solicited recommendations in recent years on how to streamline program operations to reduce costs and enhance efficiency while still maintaining HUD's core program oversight functions. The January 2015 proposed rule included programmatic changes to implement many of these suggestions. A detailed description of all proposed amendments, including technical corrections also proposed, and the reasons for the amendments can be found in the preamble to the January 6, 2015 proposed rule at 80 FR 424 to 428.

As further discussed below, portions of this final rule affect the PH program, the HCV program, the CPD programs mentioned above,[2] and the following MFH programs:[3]

- Project-Based Section 8 (New Construction, State Agency-Financed, Substantial Rehabilitation, Rural Housing Services, Loan Management Set-Aside, and Property Disposition Set-Aside).
- Section 8 Moderate Rehabilitation.
- Rent Supplement Program.
- Section 202 Supportive Housing for the Elderly (including Project Assistance Contract and Project Rental Assistance Contract (PRAC)).
- Section 811 Supportive Housing for Persons with Disabilities (including PRAC and Project Rental Assistance).
- Section 236 Interest Reduction Payments Program.
- Rental Assistance Payment (RAP) Program.
- Sections 221(d)(3) and (d)(5)—FHA Insurance Programs for New Construction or Substantially Rehabilitated Multifamily Rental Housing.

Some of the new flexibilities will require a PHA to make changes to the PHA's Admissions and Continued Occupancy Policy, Administrative Plan, or PHA plan in order for the PHA to adopt the new authorities. HUD encourages all PHAs adopting such flexibilities to make all required amendments as expeditiously as possible.

The 2015 Appropriations Act amended section 3 of the 1937 Act to allow for additional flexibility to the requirement that the flat rental amount be set at no less than 80 percent of the applicable FMR, as established under 8(c) of the 1937 Act. HUD may allow a PHA to establish a flat rent based on an FMR that is based on an area geographically smaller than would otherwise be used, if HUD determines that the resulting FMR more accurately reflects local market conditions. In addition, a PHA may apply to HUD for an exception allowing a flat rental amount that is lower than the amount otherwise determined under the two

[1] Notice PIH 2014–12, published May 19, 2014, implemented the changes to flat rents; 79 FR 35940, ''HUD Implementation of Fiscal Year 2014 Appropriations Provisions on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition, and Utility Allowances'' (June 25, 2014), implemented all other changes.

[2] The only provision in this final regulation that applies directly to the CPD programs is the earned income disregard. Other provisions that apply do so indirectly, either because of references in program-specific regulations or due to particular eligible activities that follow the requirements of the Housing Choice Voucher program. The parenthetical statements at the end of each subpart of section II.A, exclude mention of CPD programs.

[3] In the January 6, 2015 proposed rule, HUD inadvertently included reference to FHA's Section 235 Homeownership program, but as provided in a final rule published on April 3, 2015, this program is no longer active and the regulations were removed by the April 3, 2015 final rule. See *http://www.gpo.gov/fdsys/pkg/FR-2015-04-03/pdf/2015-07597.pdf.*

allowable FMRs, if HUD determines that the two FMRs do not reflect the market value of the property and the lower flat rental amount is based on a market analysis of the applicable market. In either case, the alternative flat rent must not create a disincentive for families seeking to become economically self-sufficient to continue to reside in public housing.

On September 8, 2015, at 80 FR 53709, HUD published an interim rule to amend HUD's regulations implementing the 2014 Appropriations Act language on flat rents to allow PHAs the opportunity to take advantage of the 2015 Appropriations Act authority that provides PHAs with more flexibility in setting flat rents. HUD advised that the interim rule superseded the portion of the January 2015 proposed rule year that addressed the issue of setting flat rents in public housing. Although HUD issued the September 2015 rule as an interim rule for effect, HUD sought public comment for a period of 60 days. By the end of the comment period on November 9, 2015, HUD received seven comments.

II. Changes Made at the Final Rule Stage

In response to public comment and as a result of further consideration of certain issues by HUD, this final rule makes the following revisions to the January 2015 proposed rule. With respect to changes made in response to public comment, the issues raised by the commenter and HUD's basis for responding to the comments are addressed in Section IV of this preamble. No changes are made to the September 2015 interim rule on flat rents.

A. HCV, MFH, and PH Program Regulations

1. Verification of Social Security Numbers (§ 5.216)

The use of the phrase ''date of admission'' appeared twice in the proposed rule, first to identify the endpoint of the 6-month period during which a family member under the age of 6 years who lacks a Social Security Number (SSN) may have been added to an applicant family, and then again to identify the starting point for the 90-day period allotted to such a family to obtain an SSN for the newly added child. Commenters stated that, in the HCV program, the ''date of admission'' is typically the date of lease-up (*i.e.,* the effective date of the Housing Assistance Payment (HAP) contract). Prior to lease-up, however, a PHA may have expended considerable time and resources pulling a family from the waiting list, obtaining the necessary verifications, procuring a Housing Quality Standards (HQS) inspection, and performing a rent reasonableness determination. Lease-up could ultimately occur more than 6 months from the date the child was added the household, which would result in the household being ineligible for admission to the program. To obviate such a scenario, HUD has, in this final rule, adopted two separate ''dates of admission'' for the HCV program for purposes of this provision: The date of voucher issuance and the date of lease-up. Specifically, the endpoint of the 6-month period during which a family member under the age of 6 years may be added to the household is the date of voucher issuance; the 90-day clock does not start ticking until the date of lease-up. (This provision applies to the HCV/Project-Based Voucher (PBV), Rent Supplement, Section 8, Sections 221(d)(3) and (d)(5), Section 236, 202/811, and PH programs.)

2. Definition of Extremely Low-Income Families (§§ 5.603, 903.7, 960.102)

The definition of an extremely low-income family in the final rule is revised to include the phrase ''a very low-income family,'' which is included in the statutory definition and was inadvertently omitted from the proposed rule. (This provision applies to the HCV/PBV, Section 8, and PH programs. It does not apply to the Rent Supplement, Section 235, Section 236, Sections 221(d)(3) or (d)(5) programs.)

3. Use of Actual Past Income (§ 5.609)

For the reasons presented below, HUD has decided against pursuing the regulatory changes included in the proposed rule.

4. Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

There is no change from the proposed rule. The final rule includes fees within the definition of tuition. (This provision applies to the HCV/PBV, Section 8, and PH programs. It does not apply to the Rent Supplement, Section 236, Sections 221(d)(3) or (d)(5) programs.)

5. Streamlined Annual Reexamination for Fixed Incomes (§§ 5.657, 880.603, 884.218, 886.124, 886.324, 891.410, 891.610, 891.750, 960.257, 982.516)

Based on comments submitted, this provision was revised substantially from the proposed rule, which would have provided for a streamlined annual reexamination of family income for any family whose income consists solely of fixed sources. The final rule provides for a streamlined income determination for any fixed source of income, even if a person or a family with a fixed source of income also has a non-fixed source of income. The final rule requires that, upon admission to a program, third-party verification of all income amounts must be obtained for all family members, and a full reexamination and redetermination of income must likewise be performed every 3 years. In the interim, a streamlined income determination may be performed for a family member with a fixed source of income by applying to a previously determined or verified source of income a cost of living adjustment (COLA) or interest rate adjustment specific to each source of fixed income. The COLA or current interest rate applicable to each source of fixed income must be obtained either from a public source or from tenant-provided, third-party generated documentation. In the absence of such verification for any source of fixed income, third-party verification of income amounts must be obtained.

While the final rule amends more regulatory provisions than the proposed rule, the policy has not changed. Instead, there are cross-references to 24 CFR 5.657(d), pertaining to the reexamination of family income and composition in Section 8 project-based assistance programs, inserted in various MFH regulations herein to avoid confusion and ensure the policy is included in the regulations for all programs this provision is intended to affect. (This provision applies to the HCV/PBV, Section 8 (other than Moderate Rehabilitation), 202/811, and PH programs. It does not apply to the Rent Supplement, Section 236, Sections 221(d)(3) or (d)(5) programs.)

HUD recognizes that prior to the issuance of this final rule, the Fixing America's Surface Transportation Act, or FAST Act, was signed into law.[4] Section 78001 of that Act modified the 1937 Act to allow PHAs and owners to undergo full income recertification for families with 90 percent or more of their income from fixed-income sources every three years instead of annually. HUD believes that while the FAST Act provisions and the provisions contained in this rule are very similar, they offer different benefits; therefore, HUD is retaining the flexibilities in this final rule and will issue implementation regulations for the FAST Act separately.

6. Earned Income Disregard (EID) (§§ 5.617, 960.255)

The proposed rule included a requirement that families maintain continual employment in order to

[4] Public Law 114–94, signed December 4, 2015.

obtain EID benefits over a straight 24-month period, and it allowed families who received the full EID benefit and then subsequently requalified for the benefit to obtain it again (*i.e.,* the proposed rule eliminated the maximum lifetime disallowance). The proposed rule also included a carve-out for the HOPWA program, which retained the provision unchanged.

In the final rule, all HUD programs to which the EID applies (including the HOPWA program) are aligned, the lifetime disallowance is retained, and the requirement to maintain continual employment is dropped. Ultimately, the only change to the existing regulation adopted in the final rule is that the benefit now applies for a straight 24-month period, with a clear start date and end date, irrespective of whether a family maintains continual employment during the 24-month period. PHAs and grantees are no longer obliged to track employment starts and stops, but only the start date, the 12-month date (on which the amount of the disregard may change from 100 percent to not less than 50 percent of earned income), and the 24-month (end) date.

For families enrolled and participating in EID prior to the effective date of this regulation, the previous requirements will continue to apply. (This provision applies to the HCV/PBV, HOME, HOPWA, and PH programs. It does not apply to the MFH programs.) HUD intends to publish a notice describing the changes and the administrative requirements prospectively. For current recipients of the EID, HUD will reiterate that regulations in effect immediately prior to this rule will continue to apply until the benefit period expires for these families.

B. HCV and PH Program Regulations

1. Family Declaration of Assets Under $5,000 (§§ 960.259, 982.516)

Upon further consideration and in light of comments received, HUD made a modest change to this provision from the proposed to the final rule. The proposed rule would have authorized a PHA to rely on a family's declaration starting with the first reexamination and going forward indefinitely. In the final rule, a PHA must obtain third-party documentation of assets every 3 years. The Office of Multifamily Housing Programs in HUD's Office of Housing noted support for expansion of this provision to its rental assistance programs and is issuing an interim final rule to do just that.

2. Utility Reimbursements (§§ 960.253, 982.514)

The proposed rule provides a PHA with the option of making utility reimbursement payments ''quarterly,'' for reimbursements totaling $20 or less per quarter. For the final rule, this provision is modified somewhat. The amount is raised to $45 or less per quarter. If the PHA opts to make the payments on a quarterly basis, the PHA must institute a hardship policy for the tenants if such payments would create a financial hardship for them. Based on a request for clarification, this provision was modified slightly for this final rule to make clear that reimbursements must occur no less frequently than once every calendar-year quarter. Additionally, HUD is issuing an interim final rule to expand this provision to MFH programs.

C. PH Program Regulations

1. Public Housing Rents for Mixed Families (§ 5.520(d))

There is no change from the proposed rule. The final rule requires PHAs to use the established flat rent applicable to the unit to calculate rents for mixed families. The final rule also requires that a mixed family's payment be equivalent to their total tenant payment (TTP) when their TTP exceeds the flat rent.

2. Tenant Self-Certification for Community Service Requirements (§§ 960.605, 960.607)

Just as in the proposed rule, the final rule permits PHAs to accept a tenant's signed self-certification of compliance with the community service requirement. However, to better ensure compliance with the community service requirement, HUD is requiring PHAs to review a sample of self-certifications and validate their accuracy with the third-party verification procedures currently in place. The PHA will also need to notify tenants that any self-certification may be subject to such validation.

3. Public Housing Grievance Procedures (§§ 966.4 and 966.52 Through 966.57)

Upon further consideration and in light of comments received, HUD has decided against pursuing regulatory changes pertaining to the requirement that a PHA prepare a summary of any informal settlement. HUD has also decided against pursuing changes related to the ability of either party to a grievance to request, at their own expense, that a transcript of a grievance hearing be prepared. Further, in light of comments received, HUD has provided a clarification regarding the Limited English Proficiency requirements related to grievance procedures.

This final rule maintains the elimination of the requirement that PHAs consult resident organizations before appointing a hearing officer. However, in light of comments that residents should have input into the selection process, HUD is requiring that PHAs include their policies regarding the selection process in the tenant lease form, which is subject to a 30-day comment period. Finally, the final rule also maintains the elimination of the requirement that PHAs retain a redacted copy of each hearing decision to be made available to prospective complainants, and in the place of that requirement, requires PHAs to maintain a log of hearing officer decisions as described through HUD guidance.

4. Limited Vacancies (§ 990.150)

There is no change from the proposed rule. The final rule clarifies that the number of vacant units eligible for operating subsidy must be not more than 3 percent of the total units, on a project-by-project basis.

D. HCV Program Regulations

1. Start of Assisted Tenancy (§ 982.309)

For the reasons presented below, HUD has decided against pursuing the regulatory changes included in the proposed rule.

2. Biennial Inspections and the Use of Alternative Inspection Methods (§§ 982.405, 982.406, 983.103)

Upon further consideration, HUD made a change to this provision to clarify that if an alternative inspection method employs sampling, the PHA may rely upon that method only if HCV units are included in the population of units forming the basis of the sample. In addition, in response to public comments, HUD is requiring PHAs wishing to rely upon inspection methods other than those conducted pursuant to the Low-Income Housing Tax Credit (LIHTC) or HOME programs, or inspections performed by HUD, to submit to HUD the protocol for the inspection method they wish to use along with the PHA's analysis showing that the desired protocol meets or exceeds HQS. A PHA must submit these materials to HUD for approval and may not rely upon such alternative inspection methods until such approval has been granted.

3. Housing Quality Standards (HQS) Reinspection Fees (§ 982.405)

The Department made modest changes to this provision based on comments expressing concern about the

broad nature of this authority and requests for clarity about the treatment of fees. The proposed rule would have authorized a PHA to charge a reasonable fee if a cited deficiency remained upon reinspection. The final rule states that the fee may be charged only if an owner stated that a deficiency had been fixed and the deficiency is found during reinspection to persist or if a reinspection conducted after the expiration of the timeframe for repairs reveals that the deficiency persists. With respect to the fee, the final rule makes clear that any fees collected may be used only for activities related to the provision of tenant-based assistance.

4. Exception Payment Standards for Providing Reasonable Accommodations (§§ 982.503, 982.505)

There is no change from the proposed rule. The final rule allows a PHA to approve a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with a disability.

5. Family Income and Composition: Regular and Interim Examinations (§ 982.516(c)–(e))

There is no change from the proposed rule. The final rule eliminates the requirement that a voucher agency conduct a reexamination of income whenever a new family member is added, aligning the voucher and PH regulations.

6. Utility Payment Schedules (§ 982.517)

For the reasons presented below, HUD has decided against pursuing the regulatory changes included in the proposed rule that would have authorized a PHA to define ''unit type'' as simply ''attached'' or ''detached.''

III. Discussion of Public Comments and HUD's Responses

The public comment period on the proposed rule closed on March 9, 2015, and 92 public comments were received in response to HUD's January 6, 2015, proposed rule. Comments were submitted by individual members of the public, Fair Housing advocacy groups, housing associations, and PHAs. The following presents the significant issues and questions related to the proposed rule raised by the commenters, and HUD's responses to these issues and questions.

A. CPD, HCV, MFH, and PH Program Regulations

1. Verification of Social Security Numbers (§ 5.216)

Issue: Proposal Expansion. Commenters had several suggestions for HUD to expand the proposed relief, including allowing relief if there is a newly added family member over the age of six. Others suggested that HUD simply establish a maximum time period during which a family may receive a subsidy without providing a missing SSN instead of allowing for two extension periods or that HUD should allow families to self-certify as to having obtained SSNs. Commenters also stated that the waiver should be allowed only if any enforcement action is consistent with the Administrative and Continued Occupancy Policy (ACOP) and/or the Administrative Plan and/or Tenant Selection Plan (TSP).

HUD Response: Existing regulations permit a participant household to add a new household member under the age of 6 years, even if that household member lacks an SSN at the time of admission. The participant household then has 90 days to obtain and provide documentation necessary to verify the SSN of the new household member; the processing entity may grant the household an additional 90-day extension. HUD's intent in proposing changes to the regulations governing applicants is to align the requirements for applicants with those that govern participants, including with respect to enforcement. The changes proposed above either go beyond the current requirements for participant households or vary from those requirements. As such, they are contrary to HUD's intent, and HUD declines to adopt them.

Issue: Expansion to Homeless Programs. Commenters asked HUD to expand the proposal by providing waivers to allow PHAs to house homeless individuals who are unable to provide documentation of their SSN by giving the families 90 days to provide the information.

HUD Response: HUD agrees that adopting similar flexibility with respect to homeless individuals who lack SSNs would facilitate HUD's efforts to serve homeless families. However, HUD is unable to adopt this recommended change at this time, because it is beyond the scope of this rulemaking.

Issue: Timing of Waiver. Commenters asked HUD to use the date of voucher issuance instead of the date of admission, as the date of admission usually means the date of lease-up and does not account for time for finding a unit and inspections.

HUD Response: HUD agrees with this comment and has adopted it in this final rule.

Issue: Objections. Some commenters objected to the proposal, stating that it would actually increase burden on PHAs. Others asked HUD to modify its systems to properly accept a delayed certification when there is a new child in the family or when a foster agency refuses to provide the SSN. Commenters also asked HUD to allow the use of other forms of identification, such as Individual Taxpayer Identification Numbers.

HUD Response: Several of the comments provided pertain only indirectly to the changes proposed by HUD and are therefore beyond the scope of this rulemaking. With respect to the assertion that this change may result in additional tracking and monitoring, HUD notes that, for processing entities that typically request waivers in order to house such families, the change reduces burden. In addition, the change creates benefits that offset any modest burden. Specifically, they eliminate a barrier that could otherwise prevent families from being housed, requiring no greater monitoring and tracking than is performed for participant households.

2. Definition of Extremely Low-Income (ELI) Families (§§ 5.603, 903.7, 960.102)

Issue: Low-Income Families. Commenters stated that the proposed change should not exclude households from meeting ELI eligibility who are between 30 percent and 50 percent of area median income (AMI).

HUD Response: HUD agrees with the comment and has added ''very low-income'' language to the final rule.

Issue: Requested Changes. Commenters stated that because the new definition of ELI has delayed the release of income limits, the proposal should not be finalized. Similarly, it was suggested that HUD remove income targeting completely.

HUD Response: The final rule codifies the definition of ELI in HUD's 2014 Appropriations Act. The FY 2014 Appropriations Act defines ''extremely low-income family'' to mean a very low-income family whose income does not exceed the higher of 30 percent of AMI or the poverty level. It would be contrary to the statutory change to delay in proceeding with issuance of this final rule.

Income targeting is a statutory requirement of section 16 of the 1937 Act and cannot be removed through rulemaking without statutory authority.

3. Use of Actual Past Income (§ 5.609)

Issue: Objections to the Proposed Change. Many commenters objected to the proposal's requirement that a PHA use one definition of annual income (either actual past income or projected income) for all families in a program. Also, many commenters objected to the prohibition against using both the past income provision and the provision authorizing a streamlined annual reexamination for fixed-income families. Commenters stated that these restrictions limit PHA discretion and therefore fail to provide administrative savings to PHAs.

Additionally, commenters stated that the provision did nothing to alleviate the burden associated with performing interim income reexaminations. The commenters stated that many families experience fluctuations in income over the course of a year, and that each time this happens, a housing provider must calculate income based on projected income, rather than past income. The commenters stated that furthermore, the proposal required housing providers that adopted a definition based on actual past income to calculate expenses for such things as child care and medical care during the same 12-month period, and it is difficult to have the same timeframes for all sources of income.

Other commenters stated that using past income was not an accurate way to set rent.

HUD Response: HUD agrees that the proposal provided minimal, if any, streamlining benefit, and required impractical actions on the part of housing providers in using the same time frames for income and deductions. Given the concerns raised about the proposal, HUD has decided not to adopt the use of actual past income in the final rule.

4. Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

Issue: Requests for Clarification. Some commenters supported the change, but expressed doubt that this provided streamlining relief and perhaps, instead, added to a PHA's burden, particularly in determining the amount of fees charged and then verifying those fees. Others asked for additional guidance on what fees would fall under this new policy.

HUD Response: HUD notes that this provision is included in the rule, not as administrative relief, but to codify in regulation language included in recent appropriations acts that has excluded from income those amounts needed to pay mandatory student fees.[5] Additional guidance from HUD regarding what constitutes such fees is forthcoming in the form of a notice that relies on the Department of Education definitions of tuition and fees. For example, a mandatory education fee would include student service fees. That same notice will provide guidance on how to verify fee information. (Note: Such fees are already excluded for purposes of the PH program, pursuant to § 5.609(b)(9).)

5. Streamlined Annual Reexamination for Fixed Incomes (§§ 5.657, 960.257, 982.516)

Issue: Clarifications and Minor Changes. Commenters supported streamlining reexaminations for families with fixed income, but asked that HUD make some small changes. In addition to the many requests that HUD permit both fixed-income streamlining and the use of actual past income, commenters asked that HUD allow for streamlined reexaminations even when the family does not have all of its income from fixed-income sources or when some family members have a variable income and others have a fixed income. Commenters also asked that either the regulatory definition of ''fixed'' income be made more flexible or HUD grant PHAs flexibility to establish their own definition.

HUD Response: As explained above, HUD has dropped the provision that would have authorized PHAs and owners to define annual income as ''actual past income.'' At the same time, in response to comments, HUD has revised this streamlined annual reexamination measure to provide PHAs and owners with the option of conducting a streamlined income redetermination for any fixed-income *source,* irrespective of whether an individual or a family also has a non-fixed source of income. This means that the regulation no longer requires a family to have 100 percent of its income from fixed sources, which resolves a number of the concerns expressed by commenters. The final rule also adopts an expanded list of fixed sources of income. With respect to income from annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts, if a family member receives income from any of these sources and the income consists solely of periodic payments at reasonably predictable levels, then the income source may be considered to be ''fixed.'' HUD believes that these changes respond to a number of the comments received and will provide substantial relief to PHAs and owners.

Issue: Objections and Significant Changes. Some commenters stated that the proposal did not provide any streamlining benefit, and, to fully streamline, HUD should eliminate or modify the medical expense through methods like a standard deduction or self-certification of medical expenses. Commenters expressed concern that allowing streamlined recertification for fixed income families would allow such families to overlook sources of income. Some stated that HUD should still require annual income verifications, because some families would have some members with fixed income and others with variable income.

HUD Response: While HUD is amenable to adopting several of the suggestions made by commenters, HUD will not eliminate certain requirements, such as the requirement to verify medical expenses and otherwise calculate adjustments to annual income for fixed-income families. For *ongoing* medical expenses, PHAs and owners already have the option to determine anticipated expenses by calculating expenses paid by the family in the 12 months preceding recertification. For *past one-time, nonrecurring medical expenses* that have been paid in full, PHAs and owners already have the option of including these expenses at an initial, interim, or annual recertification; if such an expense has not been paid in full but is instead being paid subject to a payment plan, then the expense would be counted as anticipated either at the time it occurs, through an interim recertification, or at an upcoming annual recertification. Further, HUD will not adopt the use of self-certification of medical expenses and other deductions, due to the risk of improper payment. Along the same lines, the final rule makes clear that a full examination of family income must be conducted upon admission to a program. Also, for PHAs and owners that choose to adopt the streamlined income redetermination, a full examination of family income must be performed at least every 3 years.

6. Earned Income Disregard (§§ 5.617, 960.255)

Issue: Definition of ''continually employed'' and effect on employment. Several commenters requested that HUD modify the proposal by clarifying the requirement that the family remain continually employed.

[5] See section 213 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015 (Pub. L. 113–235, approved Dec. 16, 2014).

In contrast to these commenters, other commenters suggested that this change should not be made, because residents eligible for EID would not be able to be continually employed for 24 months. Others objected to allowing residents to re-qualify for EID, either because it would create an additional burden on PHAs or because it could create an incentive for individuals to leave jobs when the EID expires. Some commenters expressed concern that a family losing the EID during the 24-month period would be able to qualify for a new EID period immediately, allowing for an infinite time frame to receive the EID. Commenters also suggested that HUD allow PHAs the option to allow the EID time clock to run during periods of unemployment but disregard any unemployment benefits an individual receives.

HUD Response: HUD has determined to drop the continuous employment requirement from this rulemaking. For all HUD programs that require an EID, HUD is retaining the ability of these residents to start and stop employment and still retain the benefit of the EID. However, these residents may only receive the benefit for up to 24 consecutive months from the date of initial increase in annual income. If an individual becomes eligible to receive the EID, the 24-month period will not stop if the circumstance that triggered the EID ceases; however, if the individual experiences an event that would again provide an EID benefit during the 24-month period, then the individual will be provided the rent incentive. This change eliminates the burdensome process of tracking EID starts and stops over a 48-month time period, but still provides some flexibility to tenants to receive the EID if they again obtain employment.

HUD will retain the one-time EID eligibility. Specifically, after the expiration of the 24-month period, individuals will be ineligible to receive subsequent EID benefits. HUD believes that these changes maintain the balance that HUD seeks to incentivize employment among residents while reducing the burden of administering the benefit.

Issue: Exclusion in the second 12 months. Commenters asked that HUD make the income exclusion 100 percent for the first year and 50 percent for the second 12 months.

HUD Response: HUD disagrees with this suggestion. The statutory language at section 3(d) of the 1937 Act requires PHAs to disregard 100 percent of any increase in income for the first 12 months. However, for the second 12 months, PHAs must disregard not less than 50 percent of any increase in income. PHAs have discretion during the second 12-month period to disregard more than 50 percent of any increase in income. Therefore, HUD will not adopt this suggested change.

Issue: Limiting the availability of EID. Commenters suggested that HUD align the EID effective date with a family's annual reexamination date. Others suggested that HUD should allow for income to be calculated using actual past earned income for everyone in lieu of EID, or that EID should be available only for individuals with disabilities. Commenters also suggested that HUD should allow PHAs to implement EID on their own reporting cycle.

HUD Response: HUD's intent in this rulemaking, with respect to EID, is to streamline the EID tracking process by reducing the time during which a program participant may be eligible to receive the benefit of the EID. HUD believes the changes in this rulemaking also more closely align to the statute that governs the EID. The changes suggested above are inconsistent either with the statute or with HUD's intent in this rulemaking. As a result, HUD will not adopt the suggested changes.

Issue: Additional guidance. HUD was asked for specific guidance for families that have already started EID under the previous regulations.

HUD Response: HUD agrees with this comment and has revised the final regulation to make clear that the previous regulations apply to such families.

Issue: HOPWA carve-out. Some commenters stated that allowing HOPWA to have an EID policy different from other programs with tenant populations that have disabilities is unfair to the tenants in those non-HOPWA programs.

HUD Response: HUD agrees with this recommendation and has eliminated the HOPWA program carve-out in this final rule. The final rule applies the EID uniformly to all families eligible for the benefit.

Issue: Elimination of EID. Some commenters suggested HUD should eliminate EID entirely, either because it clashes with PH's minimum rent requirement or because the family self-sufficiency program is better. Others stated that the EID should not be extended to the Shelter Plus Care and Moderate Rehabilitation/Single-Room Occupancy (SRO) programs. Some suggested that the EID time period should be limited to only three months to discourage individuals from quitting jobs at the expiration of the EID time period to avoid rent increases or that the EID time period should be expanded to 48 months to allow for more gradual rent increases.

HUD Response: As noted in response to an earlier comment, HUD's intent in this rulemaking, with respect to EID, is to streamline the EID tracking process by reducing the time during which a program participant may be eligible to receive the benefit of the EID. HUD believes the changes in this rulemaking more closely align to the statute that governs the EID. The changes suggested above are inconsistent either with the statute or with HUD's intent in this rulemaking. As a result, HUD will not adopt the suggested changes.

B. HCV and PH Program Regulations

1. Family Declaration of Assets Under $5,000 (§§ 960.259, 982.516)

Issue: Increasing Threshold. Many commenters asked that HUD increase the maximum amount of assets that can be self-certified to $10,000.

HUD Response: The final rule has not adopted this suggestion. The $5,000 amount is consistent with other policies. Existing regulations require housing providers to calculate the imputed income for assets over $5,000. Also, the Internal Revenue Service permits housing credit agencies and owners to accept a certification from families of assets under $5,000. Commenters stated that there are few residents with assets greater than $5,000.

Issue: Expansion to Admission. Some commenters asked that HUD modify the proposal to allow families to use self-certification at both admission and reexamination.

HUD Response: The final rule clarifies in the preamble that this provision applies to families at reexamination. At admission, all assets of a family will be verified as is the current practice. Also, the final rule requires a PHA to obtain third-party documentation of all family assets every three years.

Issue: Method of Certification. Commenters asked that HUD allow families to certify to total assets instead of requiring declaration of each separate asset.

HUD Response: A family's declaration of total assets may be included on a single form with each asset listed. HUD will issue further guidance about this provision of the final rule.

Issue: Expansion to Multifamily. Commenters asked that HUD allow this provision to apply to multifamily housing as well.

HUD Response: The Office of Multifamily Housing Programs, which operates various rental assistance programs, is issuing an interim final rule to accomplish this expansion.

Issue: Larger Changes to the Proposal. Some commenters asked that HUD eliminate the consideration of assets when determining income, as income from assets usually has little, if any, effect on the amount of rent paid by a family. Other commenters state that self-certification does not actually reduce burden on PHAs and may actually increase work for PHA staff.

HUD Response: Totally eliminating consideration of assets when determining income is outside the scope of this rulemaking. HUD will keep the suggestion in mind as it examines other opportunities to streamline program requirements.

Additionally, this provision is optional for PHAs. A PHA may continue to verify such assets at both admission and annual reexaminations.

2. Utility Reimbursements (§§ 960.253, 982.514)

Issue: Optional Nature of Provision. Commenters asked that HUD make this policy optional or allow PHAs to determine the frequency with which they make utility reimbursement payments. For example, some commenters requested that HUD permit annual reimbursements.

HUD Response: The changes in this rulemaking are optional, and PHAs that do not believe this provision is beneficial to their program administration may continue to provide utility reimbursements monthly. Nothing in this rulemaking permits a PHA not to provide a utility reimbursement if such a reimbursement is due. Nor does the rulemaking offer PHAs the option of making such payments less frequently than quarterly.

Issue: Frequency of Payments. Commenters asked whether the quarterly reimbursement period would be based on the calendar year or when the family moves in. Others asked for clarification on whether the payments are reimbursements or future payments.

HUD Response: The final rule has been modified to clarify that the quarterly periods are to be based on the calendar year, not the move-in date. However, HUD is not amending other policies governing when utility reimbursements are sent.

Issue: Hardship Exemption. Commenters stated that HUD should not allow any hardship exemption.

HUD Response: While the proposed rule did not contain a hardship exemption, HUD has decided for some families, waiting for a quarterly reimbursement amount may be untenable. Therefore, the final rule now requires that if PHAs make quarterly reimbursements, the PHA must have a hardship policy in place for tenants.

Issue: Quarterly Reimbursement Threshold Amount. Commenters requested that HUD increase to $50 the maximum amount of reimbursements that may be sent quarterly.

HUD Response: HUD agrees that raising the threshold for quarterly reimbursements will increase the number of families under this provision and expand the streamlining efforts. While not raising the amount to $50 per quarter, HUD has raised the threshold to $45 per quarter ($15 per month). Any burden placed on families due to this higher amount is now offset by the requirement that PHAs opting to issue quarterly utility reimbursements must include a hardship exemption policy if the quarterly payments impose a financial hardship on families.

Issue: Alternative Reimbursement Methods. Commenters asked that HUD support options other than checks for making utility reimbursement payments.

Some commenters suggested that quarterly reimbursements would not help PHAs that use automatic deposits onto a debit card.

HUD Response: HUD supports the use of alternative utility reimbursement methods, including debit cards. PHAs that choose to use such alternative methods should ensure that such reimbursement methods do not generate fees that must be paid by the tenant.

The use of quarterly reimbursement may benefit PHAs that use automatic deposits. If it does not, then HUD expects that such PHAs will not exercise this option.

Issue: Elimination of Low Reimbursement Amounts. Commenters asked that HUD eliminate utility reimbursements that are less than $10 per month or eliminate reimbursements entirely.

HUD Response: HUD does not agree that utility reimbursements for amounts less than $10 per month should be eliminated. The elimination of such reimbursements would violate sections 3 and 8 of the 1937 Act (42 U.S.C. 1437a and 1437f), which require that families pay no more than 30 percent of their annual gross income in rent for their assisted housing. HUD has determined that such rental payments are for housing and reasonable utilities costs. Therefore, eliminating a utility reimbursement of any amount would result in some program participants paying more than the maximum amount of rent that the family should pay. HUD will not adopt the suggested change.

Issue: Setting Rents by Income Bands. Commenters stated that the reimbursement burden would be completely eliminated if rents were solely determined by income bands.

HUD Response: HUD does not have the statutory authority to permit the use of rents based on income bands in the PH or HCV programs. Therefore, HUD will not adopt this suggestion.

Issue: Direct Payments. Commenters stated that owners should be able to submit utility payments directly to utility providers.

HUD Response: This rulemaking does not eliminate the option available to PHAs to make direct payments to utility providers in lieu of making utility reimbursement payments to tenants.

Issue: Prorated Reimbursements. Commenters stated that owners should be given the option to prorate the utility allowance payment based on any projected move out date; if a payment has already been disbursed when a tenant moves out, the owner should be allowed to offset the difference by using the security deposit, charging the resident for the difference, or adjusting the voucher payment amount.

HUD Response: This rulemaking requires PHAs to make a prorated utility reimbursement payment in the case of a family that moves out in advance of the next scheduled quarterly reimbursement. Likewise, if a family leaves the program with an outstanding credit from the PHA for a utility reimbursement, the PHA must reconcile the credit with the family prior to the expiration of the lease, in the case of PH, or when the HAP contract terminates or shortly thereafter, in the case of the HCV program.

C. PH Program Regulations

1. Public Housing Rents for Mixed Families (§ 5.520(d))

The comments received on this proposal were all positive and did not urge any changes. Therefore HUD is adopting the proposal, unchanged in the final rulemaking.

2. Tenant Self-Certification for Community Service and Self-Sufficiency Requirement (§§ 960.605, 960.607)

Issue: Review of Certifications. Several commenters stated that HUD should not require PHAs to obtain third-party verification when reviewing the self-certifications or should limit the times when a PHA should follow up with a third party in the review of certifications.

HUD Response: HUD agrees that it would be unnecessarily burdensome on PHAs to obtain additional third-party verification when reviewing each self-

certification. HUD is not, therefore, mandating such a process when reviewing tenant self-certifications. PHAs must, however, review the self-certifications to ensure that they are complete and provide sufficient information in order to follow up as necessary. Further, HUD strongly encourages PHAs to investigate community service compliance when there are questions of accuracy. Finally, in a change from the proposed rule, HUD is requiring PHAs to validate a sample of self-certifications and notify residents that their self-certifications may be subject to such validation in order to ensure that residents remain compliant with the community service and self-sufficiency requirement (CSSR).

Issue: Objections to Self-Certification. Several commenters objected to the proposal to allow self-certification, stating that it would reduce compliance with the CSSR.

HUD Response: While HUD understands the concerns that some residents may attempt to submit fraudulent self-certifications, the changes permit, but do not require, PHAs to accept a tenant self-certification of compliance with the CSSR in lieu of obtaining independent third-party verification. PHAs that are concerned about the potential for fraudulent self-certifications may continue to require third-party verification of compliance for each eligible resident.

Issue: Elimination of Community Service Requirement. Several commenters suggested that it would be better if HUD eliminated the community service requirement for PH entirely.

HUD Response: The CSSR is mandated by section 12(c) of the 1937 Act (42 U.S.C. 1437j(c)). HUD is therefore unable to eliminate the CSSR.

3. Public Housing Grievance Procedures (§§ 966.4 and 966.52 Through 966.57)

Issue: Alignment. Commenters suggested that all grievance procedures should be aligned across PH, Section 8, and MFH programs. This would allow for only one administrative hearing for any action. Other commenters suggested applying the revised definition of ''hearing officer'' to the HCV program, as well.

HUD Response: In general, this streamlining rule aligns program requirements where possible to simplify administration of HUD programs. In the case of the PH program, which in some cases requires grievance procedures that are beyond what is required under state/local law, it would be impractical for HUD to seek to fully align the PH program with other HUD rental assistance programs.

Issue: Hearing Postponements. Many commenters objected to language in § 966.56(c), which would limit the timing of any hearing postponements to five days. The commenters stated that the provision places unnecessary time restrictions, and timeframes should remain at the discretion of PHAs on a case-by-case basis.

HUD Response: HUD's intent in this provision is to clarify, through the use of plain language, the flexibility afforded to the hearing officer regarding the length of time for which a hearing may be postponed. The regulatory language was changed from ''not to exceed,'' to ''no more than.'' The change is not substantive, does not reduce the flexibility afforded to the PHA, and is not disadvantageous to the complainant. The final rule is unchanged from the proposed rule.

Issue: Limited English Proficiency (LEP) Requirements. Several commenters expressed concern with the newly included LEP requirements in § 955.56. The commenters asked whether a PHA must provide materials in multiple languages, and stated that PHAs should be allowed to use common sense when providing LEP materials to complainants.

Other commenters asked that HUD expand the LEP requirements beyond written materials to include providing translators at various conferences and meetings and materials in other languages for any notice related to a proposed adverse action. Some commenters stated that written materials may be inappropriate, as some residents may be illiterate in their spoken language.

Some commenters also disagreed with HUD's placement of the LEP requirements under a heading of accommodations for persons with disabilities, as limited English proficiency is not a disability.

HUD Response: HUD's intent in this provision is to clarify in the regulations the LEP requirements already in place for the PH program. On January 22, 2007,[6] HUD published final guidance in the **Federal Register**. This rulemaking does not introduce requirements that are beyond what is included in HUD's final LEP guidance. The final rule has been amended to clarify PHA obligations.

HUD agrees with the comments regarding the placement of the language, and has moved the requirement to § 966.56(g).

[6] See *http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf.*

Issue: Due Process. Commenters suggested methods to assure due process rights for complainants, including relying exclusively on local courts or limiting the streamlined process only for drug activity. Some commenters stated that PHAs should be required to set forth a basic schedule, including witness lists and supporting documents and limiting the types of testimony a PHA may introduce without allowing cross-examination of witnesses. Commenters also asked that HUD provide additional guidance on how flexible a PHA may be with certain procedures, in order to reduce the exposure of PHAs to legal challenges.

HUD Response: HUD's intent in this rulemaking is to remove overly prescriptive process requirements for PH grievances, where those requirements are not mandated by statute. The changes proposed above either attempt to maintain or add to existing requirements. The changes are not consistent with HUD's intent in this rulemaking; therefore, HUD will not adopt these suggested changes.

Issue: Consultation with Residents in Appointing Hearing Officers. Some commenters expressed concern that the proposal eliminates the requirement for PHAs to consult with residents in appointing hearing officers, stating that it damages residents' rights to impartial hearings.

HUD Response: Requiring a process to consult with residents over the selection of a hearing officer when PHAs ultimately have the final say about whom to select would be an unnecessarily burdensome process requirement, and therefore contrary to the intent of this rulemaking which is to reduce burden. Further, PHAs still may, but are no longer required to, consult with residents about the hearing officer. This suggestion would maintain the current burdensome process and is inconsistent with HUD's intent in this rulemaking. HUD will not adopt this suggestion.

However, in light of these comments, HUD agrees that tenant input into hearing officer selection process can be valuable. Therefore, HUD is requiring that PHAs include their policies for selection of hearing officers in the dwelling lease, which is subject to a 30-day comment period before any changes can be made.

Issue: Informal Settlements. Commenters asked that HUD continue to require the summary of informal settlements, stating that HUD could provide a template in order to reduce administrative burden.

HUD Response: HUD agrees that there is value in the preparation of the

summary, as it provides an opportunity for both parties to prepare for any forthcoming grievance hearing. As such, HUD will not change the previous requirement that a summary be prepared. HUD will explore whether a template summary would be useful at reducing administrative burden for PHAs.

Issue: Meeting Recordings and Transcripts. Commenters stated that HUD should still require PHAs to allow residents to record a meeting and have a transcript made, as elimination of this requirement doesn't ease the burden to the PHA, but it eliminates a benefit for future proceedings.

HUD Response: HUD agrees with this comment and this final rule reinstates language making clear that any party to a grievance may arrange to obtain a hearing transcript, at their own expense.

Issue: Retention of Hearing Officer Decisions. Commenters expressed concern that HUD was eliminating the requirement that PHAs maintain copies of decisions of hearing officers. Commenters stated that the records are important to maintaining transparency for PHAs; the commenters stated that electronic records would reduce burdens for keeping the records.

HUD Response: HUD's regulation at 24 CFR 966.56(b)(1) requires that tenants be afforded a hearing based on relevant facts related to the specific grievance. HUD disagrees that prior decisions are necessarily relevant to the individual facts related to a specific grievance hearing. Further, the retention of such documents is time-consuming and costly for PHAs. The suggested change is inconsistent with HUD's intent in this rulemaking, which is to reduce administrative burden and program costs. Therefore, HUD will not adopt the suggested change.

However, HUD agrees that basic information related to past hearing decisions could be useful for HUD oversight and for ensuring transparency in the process. Therefore, in lieu of the requirement to maintain redacted hearing decisions and making such decisions available to the public, HUD is requiring that PHAs maintain a simple log, as described in forthcoming HUD guidance, that provides basic information on past hearing decisions.

Issue: Informal Hearings. Commenters stated that HUD should reinstate informal hearings prior to a formal grievance in order to avoid more costly formal hearings whenever possible.

HUD Response: This final rulemaking did not eliminate the informal hearing (*i.e.,* informal settlement of grievance) prior to a formal grievance hearing, as initially proposed. Requirements related to the informal hearing are contained in 24 CFR 966.54.

4. Limited Vacancies (§ 990.150)

Issue: Consistency with local vacancy rates. Commenters stated that PHAs should be allowed to maintain vacancy rates that are comparable with that of the jurisdiction. Others asked HUD to set the allowed vacancy rate at not less than 5 percent, as permitted in the LIHTC and Project-Based Rental Assistance (PBRA) programs.

HUD Response: The limited vacancy provision allows for funding for vacancies of up to 3 percent. Five other types of approved vacancies are included in the existing regulation related to particular project circumstances such as modernization, special uses, litigation, disasters, and casualty losses as well as an appeal provision for vacancies due to changing market conditions.

Issue: Effect on small agencies. Some commenters objected to new language that the commenters stated would reduce subsidies to PHAs and could destabilize small agencies. Others stated that the proposal does not allow for consideration of market conditions or specific local conditions for small PHAs, which would hurt struggling agencies.

HUD Response: The proposed language retains the special consideration for PHAs with 100 units or less. HUD's Public Housing Operating Fund (Operating Fund) regulations continue to allow for appeals for changing market conditions and specific local condition.

Issue: Basis for calculation. Commenters asked that vacancies be judged on a PHA-wide basis to permit balance of high-demand areas with others where there is a low demand, because one or two vacancies could cause a vacancy rate over 3 percent. The commenters stated that PHAs should be allowed to manage their portfolio as a single program, similar to the way the private sector would do so.

HUD Response: This clarification of the limited vacancy rule retains the approach that funding is both determined and provided at a project level. The foundation of the transition to asset management, which was adopted by both PHAs and HUD at the time of promulgation of the new Operating Fund rule, was for certain PHAs to migrate away from PHA-level management and funding for those that converted to asset management. Instead, funding, budgeting, accounting, and management are all conducted at the project level. HUD recognizes each PHA's discretion as a property and financial manager of real estate to group buildings to optimize efficient property management and financial viability. The Operating Fund regulations and HUD systems currently allow PHAs to group buildings into a project(s) to best serve the interests of the property and residents.

Issue: Lag time. Commenters objected to the change because occupancy numbers being used are 12–18 months in the past, requiring PHAs to operate on non-applicable past information.

HUD Response: The Operating Fund formula in 24 CFR part 990 is based on use of historical performance data as a basis to fund current year needs. The clarification of the limited vacancy language does not modify the tenure of performance data used to calculate Operating Subsidy eligibility.

Issue: Negotiated rulemaking. Some commenters stated that HUD should stand by agreements reached through the negotiated rulemaking process that established the current operating fund formula.

HUD Response: The clarification of the limited vacancies provision is consistent with the negotiated rulemaking process.

5. Flat Rents (§ 960.253)

Issue: Phase-in of rent increases less than 35 percent. Commenters asked that HUD reinstate an earlier policy that would allow PHAs to use discretion in implementing any higher flat rents. This would have allowed PHAs to phase in small flat rent increases—those below 35 percent—over a three-year period.

HUD Response: The initial discretion for phasing in small increases was due to the fact that the changes in the 2014 Appropriations Act set all flat rents at 80 percent of FMR, with no possibilities for exceptions to that amount. HUD received indications that this might be softened in a future year, permitting PHAs to set flat rents using more localized market data. As a result, HUD used its discretion to limit the impact of flat rent changes on PHAs and tenants by allowing the higher rents to be phased in.

With the passage of the 2015 Appropriations Act, however, HUD believes that PHAs have sufficient flexibility to set flat rents that reflect the true market value of their units, and therefore the three-year phase-in for small flat rent increases is unnecessary. However, the statutory requirement to phase in increases exceeding 35 percent for families already paying flat rents remains in the rule.

Issue: Deadline for compliance. Commenters asked HUD to extend the

January 1, 2016 deadline for flat rents to take effect.

HUD Response: This comment misinterprets the effective date of the new flat rent requirements. HUD did not establish a hard deadline of January 1, 2016 for new flat rents to take effect. PHAs were already required to establish flat rents at no less than 80 percent of the applicable FMR as required by PIH Notice 2014–12. That notice clarified that PHAs were required to update flat rents no later than 90 days after HUD published new, final FMRs. The 90-day effective date of new flat rents based on new FMRs was also included in the interim rule and the accompanying guidance provided through notice PIH 2015–13. Once HUD publishes new final FMRs in any given year, PHAs will be required to update flat rents within 90 days of the publication of those FMRs and must begin applying them prospectively to new admissions and at family annual recertifications. In years where HUD takes longer than 12 months between the publication of new FMRs, PHAs are permitted to continue to charge flat rents at the current FMR, SAFMR, or approved exception flat rent amount until HUD publishes new FMRs and the 90-day effective date has taken place.

Issue: Lowering rents when FMRs or SAFMRs decrease. Commenters asked HUD for additional clarity on the requirements for when market rents decrease, particularly whether PHAs retain discretion to reduce flat rents when FMRs decrease.

HUD Response: PHAs must set flat rents at no less than 80 percent of the FMR or SAFMR, or they may submit an exception request establishing flat rents based on a market analysis. There is no such requirement limiting a PHA from lowering a flat rent in years where the FMR or SAFMR decreases. Therefore, in years where an FMR or SAFMR decreases, PHAs have the discretion to lower flat rents, but they may not set flat rents at less than 80 percent of the FMR or SAFMR unless they submit a new exception request.

Issue: Rent reasonableness guidance. Commenters suggested that a possible explanation for why flat rents have been set incorrectly in the past is due to a lack of guidance from HUD on proper rent reasonableness assessments.

HUD Response: While that may be true for some PHAs, HUD has heard anecdotally that there were many reasons why flat rents may not have been set correctly. However, in an effort to support PHAs when trying to determine the market value of their public housing, HUD will publish future guidance on rent reasonableness assessments for public housing.

Issue: Updating rent levels when an exception rent has been requested. Commenters asked for additional clarification on what the requirements were related to adjusting flat rent levels when the PHA is intending to submit a request for exception rents.

HUD Response: In this initial year, any PHAs that submit exception requests prior to the expiration of the 90-day period after the publication of new FMRs may continue to charge flat rents at the current levels until the PHA is notified of HUD's decision on their exception request. However, if a PHA fails to submit an exception request prior to the expiration of the 90 day period after the publication of new FMRs, that PHA may still submit an exception request, but must update flat rents to no less than 80 percent of the FMR or SAFMR until such time that HUD notifies the PHA of its decision on the exception request.

Issue: Flat rents and self-sufficiency. Commenters stated that PHAs should have the discretion to set flat rents lower than 80 percent of market rents in order to encourage families to become self-sufficient.

HUD Response: Flat rents themselves are intended to encourage self-sufficiency. They are a maximum amount of rent that a family could be charged; once a family begins to pay flat rent, any increases in income do not have an effect on their rental payment. Because families have the ability to choose between paying an income-based rent or a flat rent, families that choose to pay flat rents are inevitably paying a lower percentage of income than other public housing households which is a self-sufficiency incentive. Therefore, HUD does not believe that any additional discretion regarding flat rents is necessary to encourage economic self-sufficiency.

Issue: Reduced exception rent requests. Commenters asked that PHAs only be required to submit exception rent requests every three years instead of annually.

HUD Response: HUD is bound by the statutory framework, which stipulates that exception requests must be submitted if the applicable FMR or SAFMR do not reflect the market value of a property. As such, the statute requires a comparison of the FMR or SAFMR to a current market study in order to determine whether the market value of a property is less than the current FMR or SAFMR. Therefore, HUD does not have the authority to permit PHAs to use market studies that are not current for exception requests.

Issue: LIHTC rents and public housing flat rents. Commenters asked for additional clarity on how the flat rents regulation impacts the LIHTC rents.

HUD Response: PHAs that manage public housing units that were developed or modernized using LIHTC must set maximum rents for such units at the required maximum LIHTC rents, even if this is lower than the minimum flat rent amount for a particular unit.

Issue: Opposition. Several commenters objected to the flat rent policy entirely, stating that it would increase rent burden, cause higher turnover, and negatively impact tenant employment.

HUD Response: Although HUD recognizes that there are consequences to changes in flat rents, HUD believes that the changes included in the FY 15 Appropriations Act, which have been included in this rulemaking, provide sufficient flexibility to PHAs to set accurate, market-based rents. Further, tenants concerned about rent burden are reminded that they are provided a safeguard in this rulemaking from large annual increases in rent, and they are always able to elect to pay the income-based rent which is set at 30 percent of income.

D. HCV Program Regulations

1. Start of Assisted Tenancy (§ 982.309)

Issue: Objections. Many commenters objected to this proposal, stating that landlords seek to lease units as quickly as possible, and this could delay tenants from being able to move into their units. In high-demand areas, this could reduce the number of landlords willing to participate in the voucher program, limiting choice to voucher holders. Many commenters also expressed concern that this would have negative consequences for families that need to move immediately or alternatively would cause tenants to have to move out of a unit before being able to move into a new one. Other commenters stated that this would concentrate administrative tasks into a single time of the month for PHAs, actually increasing their burden.

HUD Response: HUD has decided against promulgating this change. Several commenters favored the proposed change, but input from groups ranging from landlords to tenant advocates suggested that the change would have an adverse effect on the ability of HCV-assisted tenants to access housing. While the proposed change would have been optional at the discretion of the PHA, and HUD estimates that PHAs would choose not to adopt any measure that would make

it more difficult for HCV-assisted tenants to access housing, HUD ultimately decided that it could move forward with the change only if it also required any PHA opting to implement the provision to also put into place an exception policy for certain families (*e.g.,* victims of domestic violence) or situations (*e.g.,* HAP terminations due to HQS violations). Ultimately, requiring the adoption of an exception policy would counter any administrative relief provided by implementing the proposed change. Taking all of these factors into consideration, HUD declines to include this provision in this final rule.

2. Biennial Inspections and the Use of Alternative Inspection Methods (§§ 982.405, 983.103)

Issue: HUD Systems. Commenters suggested ways that HUD could improve its inspection procedures. Some commenters suggested that the electronic systems be updated for biennial inspections, and others asked for a centralized database for inspection reports and data, which could then be accessed by PHAs in order to obtain the results of alternative inspection methods. Some commenters stated that HUD should review inspection protocols with input from PHAs and implement ''best practices'' across the board. Commenters also asked for consolidating inspection standards between HUD programs and LIHTC.

HUD Response: While these comments are helpful in that they specify improvements to HUD systems that would simplify the inspection process, advise of the burden that results from differences in inspection protocols and standards, and point out at least one way in which an expansion of this provision could bring about further streamlining, they are either beyond the scope of this rulemaking or would require statutory changes.

In addition, HUD's information technology investment decisions are made enterprise-wide based on available resources as appropriated by Congress. HUD will explore ways to move to electronic reporting systems with available resources. In particular, HUD is considering the creation of a national-level affordable housing database that could be utilized in the way described.

Issue: Keep Proposal Optional. Some commenters stated that PHAs may want to inspect properties more frequently for oversight purposes, and therefore asked that biennial and alternative inspections remain optional for PHAs.

HUD Response: As authorized by Congress and proposed in this rulemaking, the use of biennial inspections is at the discretion of the PHA; PHAs will retain the discretion to inspect annually any properties that warrant more frequent attention. The same is true of alternative inspection methods—their use is entirely at the discretion of the PHA, per the statute and this rulemaking. Nothing in this final rule requires a PHA to adopt biennial inspections or alternative inspection methods.

Issue: Remediation Protocols. Commenters offered several suggestions on how to remediate problems identified by alternative inspections. Some stated that HUD should allow PHAs to rely upon the remediation protocol of the alternative inspection method; there would be no burden relief if PHAs have to conduct HQS inspections anyway for units that failed the alternative inspection the first time. Some commenters suggested that this could be satisfied by providing HUD with a certification from the inspecting agency that the deficiencies have been mitigated. Commenters stated that HUD should allow PHAs to decide if they will conduct a remedial HQS inspection or rely on the owner to provide proof of actions to remedy defects.

HUD Response: HUD is sympathetic to the suggestion that any streamlining benefit of this provision is offset by the requirement that a PHA inspect a property using HQS when the property has already been inspected using an alternative inspection method and such method reveals the existence of violations that would have resulted in a ''fail'' score under HQS. For an alternative inspection method that employs sampling, however, as is the case with inspections of properties subsidized with LIHTCs, any cited deficiencies that would ultimately be corrected may exist as well in units not included in the sample, including units occupied by HCV-assisted households. HUD has an obligation to determine whether such deficiencies exist in units occupied by such households and, if they do, to assure that the units are once again brought into compliance with HUD's housing quality standards.

PHAs are only precluded from relying on an alternative inspection method if a property inspected pursuant to the method fails an inspection. In all cases where a property passes an inspection, even if deficiencies are identified, a PHA may rely upon the alternative inspection method to demonstrate compliance with HUD's housing quality standards. If a property fails an inspection due to identified deficiencies, it may be the case that remedial actions taken pursuant to the alternative inspection method fall short of what would be required under HUD's housing quality standards.

In any circumstance in which a PHA is prohibited from relying on an alternative inspection method, HUD declines, for the reasons identified above, to adopt alternative remediation measures as a substitute for a PHA's determination that a unit occupied by an HCV-assisted family meets the requirements for occupancy and funding under the HCV program.

Issue: Reinspection Sampling. In the case of residents with tenant-based vouchers living in mixed-finance properties, commenters stated that HUD should authorize biennial inspection of a random sample of units consisting of at least 20 percent of the contract units in each building.

HUD Response: Congress specifically authorized the use of alternative inspections, including inspections conducted pursuant to requirements under the low-income housing tax credit (LIHTC) program. The LIHTC program employs sampling. A PHA may adopt an alternative inspection method that is specifically authorized by Congress or approved by HUD and employs sampling.

Issue: Alternative Inspection Standards. Commenters suggested that HUD require HUD's Real Estate Assessment Center (REAC) to approve or disapprove a PHA's certification that an alternative inspection method meets HUD standards prior to allowing the PHA to employ the alternative inspection method.

HUD Response: HUD has adopted this suggestion in this final rulemaking.

Issue: Local Jurisdiction Inspections. Commenters asked that HUD allow PHAs to use inspections done for local jurisdictions, even when the inspections are done by local agencies.

HUD Response: The statute authorizes PHAs to rely on inspections conducted under a ''Federal, state, or local housing program.'' HUD interprets a ''local housing program'' to include a local housing code. Subject to the conditions established in this final rule, a PHA may rely upon an inspection conducted pursuant to a local housing code to meet its obligation to inspect units occupied by HCV-assisted tenants during the course of a housing assistance payments contract. In order to rely upon such an inspection, a PHA must submit a copy of the local housing code to HUD, along with an analysis by the PHA showing that the local housing code standard meets or exceeds HQS. Once HUD has reviewed these materials, and then only if HUD approves use of the inspection method, the PHA may rely upon it. The PHA must certify annually to HUD that

the local housing code has not changed; if it has changed, then the PHA must again obtain HUD approval to rely upon the standard, submitting a copy of the revised code and an analysis showing that the revised standard meets or exceeds HQS.

Issue: Objections. Some commenters expressed dissatisfaction with the proposal, particularly with alternative inspections, and stated that HUD should not continue with the proposal.

HUD Response: HUD is required by law to implement biennial inspections and inspections via alternative inspection methods.

3. Housing Quality Standards (HQS) Reinspection Fees (§ 982.405)

Issue: Burden on PHAs and Deterrence to Landlords. Some commenters objected to the proposal, stating that landlords would be reluctant to pay reinspection fees and would therefore be deterred from participating in the Section 8 program. Others stated that charging fees to landlords would be a burden to PHAs, and therefore should remain optional and up to the PHA to decide how to implement.

HUD Response: The proposed change made it optional for a PHA to charge a reinspection fee, and this final rule retains the optional nature of the provision. If a PHA has a concern that charging a fee may deter landlords from participating in the program or may result in additional work (*i.e.,* securing payment of a fee, once assessed), then the PHA will want to take these factors into consideration when determining whether to impose a reinspection fee. As long as a PHA complies with the requirements of this regulation when imposing a reinspection fee, nothing in this regulation would constrain a PHA from adopting local policies specific to the administration of such a fee. For example, a PHA could specify in its Administrative Plan that an owner will be charged a reinspection fee only after a second reinspection reveals that the defect persists. PHAs will need to determine whether and how best to use this reinspection fee authority, based upon their local circumstances.

Issue: Use of Fees and When to Charge. Some commenters suggested that the collected fees be added to administrative fee amounts available to a PHA.

HUD Response: Fees will be included in a PHA's administrative fee reserve and may be used only for activities related to the provision of Section 8 tenant-based assistance.

Issue: Guidance. Several commenters asked HUD to provide additional guidance on what constitutes a ''reasonable'' fee; such guidance will be necessary to reduce PHA administrative burden.

HUD Response: HUD will issue guidance on what constitutes a ''reasonable'' fee.

Issue: When Charges May Be Assessed. Commenters asked that HUD clarify the proposal to avoid charges for full HQS inspections instead of merely for reinspections of previously identified deficiencies. Others asked for information on how the proposal would relate to special inspections that are not initial or regularly scheduled inspections, or what would happen if a landlord or tenant does not attend or allow entrance for the inspection. Commenters also asked that HUD expand the proposal to allow for the charging of fees even when a landlord has not indicated deficiencies have been corrected, when the allotted time for repairs has expired but a pre-scheduled reinspection reveals the repairs have not been made.

HUD Response: The final rule makes clear that a fee may be assessed under two circumstances: First, if a landlord affirms that a repair has been made and a subsequent reinspection shows that it has not and, second, when the allotted period of time for making the repair has lapsed and a reinspection shows that the repair has not been made, whether or not the landlord has affirmed that it was.

Issue: Expansion of Proposal. Some commenters also suggested that HUD expand the proposal to allow for fees for all reinspections. Others stated that PHAs should be allowed to redirect funds from abated rents to cover the costs of inspections instead of charging fees. Finally, commenters stated that HUD should consider other incentives for landlords, such as allowing tenants to pay rent into repair escrow accounts.

HUD Response: HUD appreciates these suggestions and observations but has declined to adopt them as part of this rulemaking.

4. Exception Payment Standards for Providing Reasonable Accommodations (§§ 982.503, 982.505)

Issue: Unit Special Features. Commenters stated that HUD should include a consideration of special features of the unit when establishing a reasonable rent between 110 percent and 120 percent of area fair market rent (FMR).

HUD Response: There was strong support for retaining this provision unchanged, and HUD has done so. A PHA must take special features into consideration when there is a reasonable accommodation request. In accordance with 24 CFR part 8, a PHA must provide a higher payment standard if requested as a reasonable accommodation for a family that includes an individual with disabilities. HUD's regulation implementing section 504 of the Rehabilitation Act, at 24 CFR part 8, is referenced in 24 CFR 982.505(d). In addition, under 24 CFR 8.28(a)(3), PHAs are already required, when issuing a voucher to a family that includes an individual with disabilities, to assist the family in locating an available, accessible dwelling unit. For example, PHAs are required to provide a current listing of available units known to the PHA.

Issue: HAP Funding. Commenters stated that PHAs will be challenged to provide higher payment standards when HAP funding is already constrained.

HUD Response: HUD acknowledges the concerns about funding constraints. PHAs are nonetheless required to assist families that include an individual with disabilities, including by providing a higher payment standard as a reasonable accommodation, if the family requests such an accommodation and it is necessary in order for the family to obtain suitable housing.

5. Family Income and Composition: Regular and Interim Examinations (§ 982.516(c)–(e))

Issue: Timing of Interim Examinations. Commenters supported this proposal, but also asked that it remain optional for PHAs. Some asked for further clarification from HUD regarding whether a PHA is required to conduct an interim examination when a family member is added, and at what point such an examination might be required. Several commenters also pointed out that the new proposed language did not align regulations between the PH and Section 8 programs.

HUD Response: HUD agrees with providing clarity to the proposed change to 24 CFR 982.516. With the removal of paragraph (e) (''Family member income''), HUD is removing from part 982 the requirement that a PHA perform an interim examination whenever a new family member is added. The corresponding regulation for the PH program (24 CFR 960.257) contains no such requirement. The removal of paragraph (e) from § 982.516 provides HUD with the opportunity to issue uniform guidance on interims—in other words, guidance that will apply to both the PH and HCV programs. Having reviewed data on the reasons for which interims are requested and considering a number of alternatives, including establishing thresholds below which

PHAs would not be required to conduct interims, HUD determined that the greatest potential for streamlining lies in issuing uniform guidance. Other options either created their own administrative challenges and/or had the potential to have a negative effect on program participants. For example, authorizing PHAs to limit interims to circumstances in which a change in family income or composition would result in a rent increase of some threshold dollar amount would require PHAs to determine whether the threshold had been met, which would in itself be a burdensome exercise. At the same time, a finding that the threshold had not been met, resulting in no change to a family's rent, could place a burden on tenants.

Issue: Discretion and Threshold Amounts. Several commenters requested that HUD continue to leave policies regarding recertifications up to the discretion of PHAs.

HUD Response: Nothing in this final rule alters PHA discretion with respect to interims.

6. Utility Payment Schedules (§ 982.517)

Issue: Objections to the Proposal. Many commenters objected to the proposal to consolidate the utility payment schedules. Some commenters stated that the definition of ''attached'' and ''detached'' are unclear, and HUD should provide additional information. Other commenters stated that consolidating the schedules would penalize tenants in certain types of units because energy use is not always comparable under such broad categories. Some commenters suggested that the proposal could raise fair housing issues by impacting larger families in multi-bedroom units. Others stated that the proposed 60-day notice was insufficient to protect tenants from decreased utility allowances.

Some commenters stated that, in areas served by more than one PHA, perhaps with differing policies on how to define unit types, the proposal would create confusion for program applicants and participants.

HUD Response: Considering the totality of the comments submitted on the proposal to authorize PHAs to establish utility payment schedules that limit ''unit type'' to either ''attached'' or ''detached,'' HUD has decided against adopting this provision. HUD acknowledges comments that the proposal may have an unintended and inequitable effect on certain households, and believes this issue merits additional analysis in order to determine the extent to which these outcomes may occur and to weigh those outcomes against the benefits of streamlining. In addition, comments focused on jurisdictional questions caused HUD to realize that the proposal could create confusion—for program applicants, especially—in the event PHAs with overlapping jurisdictions opted to adopt different definitions of ''unit type'' (*i.e.,* one relying on the traditional method and the other choosing to define unit type as either ''attached'' or ''detached'').

Issue: Broader Utility Allowance Changes. Commenters asked HUD to consider broader changes to utility allowances. Commenters suggested that HUD completely eliminate utility allowance schedules or allow flat utility allowances based on average per-bedroom size or household size. Others suggested that HUD provide an annual utility cost adjustment factor for each locale instead of requiring PHAs to calculate utility costs on their own. Finally, some commenters suggested that HUD establish a more equitable utility subsidy approach, accounting for other forms of assistance, such as utility caps or utility credits.

HUD Response: Based on comments received, HUD recognizes that having a holistic look at utility allowance calculations may be merited. Should HUD initiate such a review, these comments will be taken into consideration. The suggestions are, however, beyond the scope of this rulemaking.

E. Other Comments

In addition to comments on specific proposals, commenters also suggested regulatory and other changes that HUD could make for streamlining and other burden-reducing benefits.

1. Enterprise Income Verification (EIV)/ Information Verification

Issue: EIV Reports. Some commenters suggested that certain reports (*e.g.,* New Hires, New Move-In, Income Discrepancy) should not be used as frequently, if at all. The commenters suggested that, to the extent such reports provide useful information, the information could be gathered at other times or using other methods.

HUD Response: HUD appreciates the comments regarding the use of the various EIV reports. HUD understands that the information generated through some reports may reflect delayed information. However, EIV has significantly reduced improper payments in HUD's programs, and these reports help PHAs and HUD to monitor program participants and address discrepancies in a timely manner. Further, changes to EIV are beyond the scope of this rulemaking.

Issue: EIV Use and Expansion. Many commenters suggested that HUD modify the EIV system by adding additional income sources, including past income, in the system or allowing verification of SSNs through EIV. Other commenters suggested that HUD consider alternatives to EIV, such as the Work Number or cooperative agreements with state agencies. Finally, commenters asked for more frequent updates to EIV.

HUD Response: HUD appreciates the comments about how to improve or supplement EIV; however, these suggestions are outside of the scope of this rulemaking.

2. Income Determinations and Rent Settings

Issue: Calculation of Income. Commenters offered suggestions on ways that they stated would be easier to calculate tenant income and rent. Some stated that HUD should base rents on gross income, rather than adjusted income. Others suggested that HUD modify the process for deducting medical expenses from income by using past expenses or a standard deduction. A standard childcare deduction was also proposed. One commenter suggested that HUD consider the automation-based process for certification and verification incorporated by the Affordable Care Act.

Commenters also asked HUD to allow for less frequent income reexaminations, either on a biennial or a triennial basis. This change could be authorized based on family type (*i.e.,* elderly, disabled) or family income status (*i.e.,* extremely low-income, very low-income).

Some commenters requested an increase in the minimum rent or that HUD reinstate the ''frozen rental income'' regulation provision to encourage tenants to have earned income. Others asked that HUD consider limiting the inclusion of assets by only including actual income from assets or only including assets disposed of for less than fair market value for assets over a given threshold. Some stated that HUD should count assets disposed of since the two previous annual reexaminations instead of the previous two years.

Commenters stated that HUD should not allow tenants to claim no income, but instead should require that all tenants maintain a minimum income.

Finally, commenters stated that PHAs should not be required to conduct rent reasonableness determinations when a PHA is using a fair market rent determined by HUD or when a proposed rent has already been approved by HUD or its administrator.

HUD Response: HUD requested comments from the public about other opportunities to align requirements across programs, and HUD appreciates receiving these additional comments. Some of the suggestions are outside the scope of this rulemaking or would require statutory change. However, HUD will consider these suggestions for future streamlining changes.

HUD has taken actions on other suggestions. HUD's FY 2016 budget proposes three-year recertification of income for fixed income families, increasing the threshold for deduction of medical and related care expenses, and a Utilities Conservation Pilot that would make it easier for PHAs to access energy incentives from energy investments. Also, HUD is conducting a rent reform demonstration to compare the current rent structure in subsidized housing to an alternate structure in terms of impact on household employment, earnings, hardship, homelessness, and on simplification and cost of PHA administrative processes.

3. Fees and Payments

Issue: Funding and Improper Payments. Many commenters provided suggestions on how to improve and streamline payments to owners and PHAs. Several suggested increased funding for administrative fees or physical inspections. Other commenters stated that HUD should permit voucher HAP reserves to be used for administrative purposes when the administrative fee proration is below 90 percent.

Some commenters requested HUD freeze the rolling utility base to allow PHAs to recoup savings from energy conservation methods. Others asked HUD to allow expedited implementation of lower payment standards in the voucher programs. Several commenters suggested that HUD revise its process for determining project expense levels, accounting for the age of properties and using the negotiated rulemaking inflation factor. One commenter stated that HUD should permit rent increases to owners in the HCV program only on a contract anniversary date.

Commenters also provided suggestions on reforming improper payment procedures. A commenter asked that HUD not require owners to provide proof of the costs involved in recovering improper payments. Commenters also suggested that HUD not specify what makes repayment of improper payments ''affordable'' to residents, as the current definition is confusing and leads to extra work for staff.

HUD Response: As is the case on HUD's response to the preceding issue, many of the comments are outside the scope of this rulemaking or would require action by Congress, but HUD will consider these for future streamlining changes. With respect to freezing the rolling base to allow PHAs to recoup savings from energy conservation methods, this is permitted now when a PHA has entered into an energy performance contract.

4. Miscellaneous Suggestions

Issue: Broader Streamlining and Other Suggestions. Many commenters had specific suggestions on how to align requirements and processes across programs. Some suggested that HUD use the Public Housing Administrative Reform Initiative to find some additional streamlining suggestions. Others stated that HUD should have just a single entity review grantee compliance with various program requirements instead of allowing multiple agencies to have oversight.

Some commenters asked HUD to modify inspection protocols, including by explicitly stating that a physical reinspection of deficiencies is not required. Others stated that HUD should not use the Uniform Physical Conditions Standards for HCV, but should continue to use the HQS. Commenters further asked that HUD reconsider the requirement that failed HQS items be reinspected prior to the HAP contract effective date, instead allowing families to move in while the owner has 30 days to repair the failed items.

Commenters also stated that HUD should limit requirements under section 3 of the 1937 Act to only programs under the Office of Housing. Others asked that HUD institute a threshold of activity below which Section 3 requirements would not apply.

Some commenters asked that eligibility and reporting procedures be standardized across housing programs both in HUD and across other Federal agencies. Others stated that HUD should extend the zero-subsidy time limit for voucher holders to align policies between the voucher and PBRA programs. Many commenters also stated that HUD should allow PHAs the discretion on whether or not to require community service in PH, as it is not required in other HUD programs.

A commenter stated that HUD should incorporate policies from the Multifamily Handbook into the PH and voucher programs to provide additional information on how a PHA should consider a tenant family's circumstances when they fail to recertify in a timely manner.

Some commenters stated that HUD should allow PHAs to be eligible for Housing Trust Fund money for PH rehabilitation. Others asked that HUD clarify that PHAs with 250 or more units of PH are still able to use operating reserves for capital improvements.

Commenters also asked for clarity on the HCV Tenancy Addendum and on qualifying for the Capital Fund Activity exclusion for environmental assessments.

HUD Response: HUD will take these suggestions into consideration as it seeks to identify additional opportunities to reduce the administrative burden on PHAs and owners and to align the requirements across programs, where feasible. The majority of these suggestions is beyond the scope of this rulemaking, or would require statutory change. However, for others, HUD can address through administrative guidance. With respect to the suggestion that HUD thoroughly review the final report of the Public Housing Administrative Reform Initiative, this report is among the documents initially reviewed by HUD's streamlining working group, which ultimately initiated this rulemaking.

Issue: Regulatory Relief in Property Assessment. Several commenters asked HUD to suspend PHA plan requirements or for a moratorium on the Physical Needs Assessment. Commenters asked for waivers of asset management regulations affecting funding, such as cash transfers between properties, fee caps, and Asset Management Project (AMP) configurations. Commenters further asked for broad waivers under 24 CFR part 5 and for the Public Housing Assessment System and Section Eight Management Assessment Program to be advisory only for non-statutory items. Finally, commenters stated that HUD should ensure that PHAs are fully trained before any changes go into effect.

HUD Response: HUD remains interested in identifying opportunities to reduce the burden on PHAs, owners, and grantees that administer rental assistance. While the suggestions provided here are outside the scope of this rulemaking, they are helpful in identifying for HUD areas on which to focus attention. HUD will continue to look for opportunities to streamline and simplify the administration of its programs, and to align the requirements across programs, to the extent feasible and reasonable, applying the same lens to future proposals as it employed for this rulemaking effort. Specifically, any

proposal to relieve the administrative burden on PHAs, owners, and grantees will need to be balanced against important tenant protections and HUD's obligation to provide program oversight. With respect to guidance and training, HUD is aware that PHAs, owners, and grantees may have questions about how best to implement several of the provisions in this rule. HUD will provide opportunities to address those questions, through additional written guidance, training, and other means that enable HUD to respond to requests for information.

Issue: Statutory Changes. Commenters requested changes that they acknowledged would require congressional action. These proposals include an earned income deduction for all families, eliminating voucher portability, expanding Moving to Work, the Small Housing Authority Reform Proposal, triennial recertification for fixed-income families, increasing the flat deduction for elderly families or persons with disabilities, increasing the medical expense deduction, or eliminating eligibility differences among programs.

HUD Response: For several of these suggestions, HUD has previously sought statutory change. In its FY14 budget proposal, for example, HUD included several statutory changes that were ultimately enacted by Congress and have now been implemented with the publication of this final rule. HUD will continue to look for opportunities to streamline and simplify the administration of its programs, and to align the requirements across programs, to the extent feasible and reasonable, applying the same lens to future proposals as it employed for this rulemaking effort. Specifically, any proposal to relieve the administrative burden on PHAs and owners will need to be balanced against important tenant protections and HUD's obligation to provide program oversight.

IV. Findings and Certifications

Executive Orders 12866 and 13563, Regulatory Planning and Review

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulation and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As already discussed in this preamble, the regulatory changes by this streamlining rule are designed to reduce administrative burdens on PHAs, enable PHAs to better target assistance to families, and reduce Federal costs. Some of the changes in this rule are due to statutory changes enacted in the FY 2014 Appropriations Act and have specific estimates of financial savings that may be expected (specifically the change in the definition of ''extremely low-income'' and the cap on the utility allowance). Other changes (biennial inspections, streamlining income recertifications) may have estimates on savings generated by Moving-to-Work (MTW) agencies that already implemented such flexibilities. Some provisions of this rule, however, focus solely on providing or revising regulatory provisions that reduce administrative burdens on PHAs, but that are optional for PHAs to utilize. Consequently HUD is unable to quantify costs and benefits for this rule overall because of the flexibility provided.

The rule provides PHAs with the discretion as to whether they will implement those regulations that provide alternatives means of implementing several required administrative actions. HUD recognized that there is a need for greater flexibility for PHAs to operate programs that fit their communities and to use savings generated in time from these provisions to better focus resources on their operational priorities. However, savings are difficult to estimate as the changes are not mandatory. HUD's FY2015 budget estimated Federal savings for two of the provisions, changing the definition of ''extremely low-income'' and placing a cap on the utility allowance. HUD's budget did not contain savings estimates for other provisions which would yield efficiencies for PHAs, not HUD. For the provision permitting biennial inspections, savings data comes from Moving-to-Work (MTW) agencies experiences and reporting.

In FY2015, HUD estimated that the revised definition of extremely-low income will reduce Federal costs by an estimated $155 million. The change increases access to HUD rental assistance for working poor families, in rural areas in particular. In such areas, median incomes are often so low that families with a fulltime worker have incomes that exceed 30 percent of AMI, even though the families remain below the Federal poverty level. In the voucher program in particular, where 75 percent of vouchers issued each year must be targeted to ELI families, this change will enable more working poor families to qualify for voucher assistance.

Additionally, HUD estimated in its FY2015 budget that limiting the utility allowance payment for tenant-based vouchers to the family unit size for which the voucher is issued, irrespective of the size of the unit rented by the family, will generate estimated savings of $50 million.

Permitting biennial inspections for HCV units will reduce the administrative and financial burden on PHAs and high-performing landlords and enable PHAs to concentrate their inspection resources on the more marginal and higher-risk units. Of the 34 MTW agencies, 23 have adopted or proposed to adopt biennial inspection schedules. The Cambridge Housing Authority estimated a net savings of $122,234, or more than 3,737 hours of staff time in 2014 compared to 2008. The Housing Authority of the County of San Mateo reduced the number of inspections to approximately 2,086 annually from 4,172 and reported savings of $52,150 in inspection costs. HUD believes that PHAs adopting this flexibility will experience similar savings in time and costs.

Determining the complete amount of financial and time savings for this rule is difficult because, as noted, the majority of the provisions are discretionary for PHAs, and HUD believes that each PHA will evaluate its own circumstances in financing and staffing and adopt those provisions that are most cost-effective for them.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose

substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule reduces the administrative burden on PHAs, MFH owners, and certain CPD grantees in many aspects of administering assisted housing. Such PHAs, MFH owners, and CPD grantees, regardless of size, will benefit from the burden reduction proposed by this rule. These revisions impose no significant economic impact on a substantial number of small entities. As discussed above, many of the new provisions are voluntary, and each PHA or MFH owner will be able to adopt the streamlining provisions that offer the greatest benefit to them, further reducing any negative effects on small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made on the proposed rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding remains applicable to this final rule. The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2577–0220 and 0169. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.103, 14.123, 14.135, 14.149, 14.157, 14.181, 14.195, 14.235, 14.241, 14.326, 14.850, 14.871, and 14.872.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 990

Accounting, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5, 880, 884, 886, 891, 903, 960, 966, 982, 983, and 990 as follows:

[Note: Remainder of notice omitted. For text of 24 CFR Parts 5, 903, and 982, see CFR References section of this Coursebook]

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

SPECIAL ATTENTION OF:

Public Housing Agency Directors
Public Housing Hub Office Directors
Public Housing Field Office Directors

NOTICE PIH 2016-05 (HA)

Issued: April 7, 2016

This notice remains in effect until amended, superseded, or rescinded

Subject: Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies

(1) **Purpose.** This Notice presents implementation guidance for provisions included in the regulation titled "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs," also known as the "streamlining rule." This Notice addresses provisions only as they apply to programs administered by public housing agencies (PHAs).

(2) **Background.** Published on March 8, 2016, the final streamlining rule contains 16 provisions. All of the provisions touch on programs administered by HUD's Office of Public and Indian Housing; some of the provisions apply as well to multifamily programs administered by HUD's Office of Housing and/or HUD's Office of Community Planning and Development. The background section of the rule explains in detail how the provisions were selected for inclusion in the rule.

While some of the provisions included in the final rule are fairly simple and therefore require no implementation guidance, others are less straightforward and require further implementation guidance. This Notice addresses each provision and either provides implementation guidance directly or refers the reader to other implementation resources.

(3) **Applicability to Moving to Work (MTW) Agencies.** This Notice applies generally to MTW agencies. With respect to individual MTW agencies, any specific regulatory provision that is addressed in this Notice and has been waived as part of the agency's approved Annual MTW Plan does not apply to that agency.

(4) **Structure.** This Notice presents each provision as a separate attachment. Each attachment follows a uniform structure:

(a) Regulation;

(b) Programs to which the provision applies;

(c) Description of change;

(d) Background;

(e) Whether adoption of the change is mandatory or at the discretion of the public housing agency. If a PHA adopts a provision that is addressed in its Admissions and Continued Occupancy Policy (ACOP) and/or Administrative Plan (Admin. Plan), then the PHA must amend its ACOP/Admin. Plan prior to implementing the provision. If adoption of a provision constitutes a significant amendment to a PHA's Plan according to the PHA's definition of a significant amendment, then the PHA must complete a significant amendment to the PHA Plan as described in 24 CFR 903.21.

(f) Effective date. For any provision that requires a PHA to update its ACOP and/or Admin. Plan or that requires a significant amendment to the PHA Plan, a PHA must begin the process of updating its ACOP/Admin. Plan or begin the significant amendment process as soon as possible following the publication of this final rule so that the provision may be implemented as soon as possible following the effective date of the provision.

(5) Summary chart. The chart below lists each of the attachments to this Notice, showing, for each provision, whether its adoption is mandatory or at the discretion of the PHA.

Attachment	Provision	Mandatory or Discretionary
A	Verification of Social Security Numbers	mandatory
B	Definition of extremely low–income families	mandatory
C	Exclusion of mandatory education fees from income	mandatory
D	Streamlined annual reexamination for fixed sources of income	discretionary
E	Earned income disregard	mandatory
F	Family declaration of assets under $5,000	discretionary
G	Utility reimbursements	discretionary
H	Public housing rents for mixed families	mandatory
I	Tenant self-certification for Community Service and Self-Sufficiency Requirement	discretionary
J	Public housing grievance procedures	discretionary

K	Biennial inspections and the use of alternative inspection methods	discretionary
L	Housing Quality Standards reinspection fee	discretionary
M	Exception payment standards for providing reasonable accommodations	discretionary
N	Family income and composition: regular and interim examinations	discretionary
O	Utility payment schedules	mandatory

(6) Paperwork Reduction Act. The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB control numbers 2577–0220 and 0169.

HUD is submitting a Paperwork Reduction Act (PRA) request to OMB. With an approval and PRA number, PHAs may submit requests to use an alternative inspection method to: Deputy Assistant Secretary, Real Estate Assessment Center, 550 12th Street SW, Washington, DC 20410. REAC anticipates a review period of up to 90 days from the date of the receipt of the request, without presumption of approval if REAC does not respond to the PHA within 90 days.

/s/

Principal Deputy Assistant Secretary
Lourdes Castro Ramírez

Attachment A: Verification of Social Security Numbers

Regulation: 24 CFR §5.216

Programs to which this provision applies: Housing Choice Voucher (including project-based voucher), public housing, Section 8 Moderate Rehabilitation

Description of change: This provision modifies the regulation as it applies to program *applicants* (as differentiated from program *participants*). The change creates a 90-day period during which an applicant family may become a program participant, even if the family lacks the documentation necessary to verify the Social Security Number (SSN) of a family member under the age of 6 years. An extension of one additional 90-day period must be granted if the PHA determines that, in its discretion, the applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside of the control of the applicant. For example, an applicant may be able to demonstrate timely submission of a request for an SSN, in which case processing time would be the cause of the delay. If the applicant family does not produce the required documentation within the authorized time period, the PHA or processing entity must impose appropriate penalties, in accordance with 24 CFR 5.218.

In terms of offering a grace period and an extension, if merited, a PHA will implement this provision just as it currently implements the provision for program participants. Specifically, an applicant family with a child under the age of 6 years may become a participant family, even if the SSN for the child has not been verified at the time of admission. If the SSN has still not been verified at the end of the initial 90-day period, then the PHA must determine whether a 90-day extension is merited. If it is not merited, then the PHA must follow the provisions of 24 CFR 5.218. If a 90-day extension is merited, then the PHA must either verify the SSN for the child by the end of the 90-day extension period or follow the provisions of 24 CFR 5.218.

Background: This change brings the guidance for applicants more closely in line with longstanding guidance for program participants (at 24 CFR 5.216(e)(2)(ii)). For applicants, the change is slightly more flexible, requiring at least one 90-day grace period if the SSN has not been *verified* (for program participants, the standard is that the SSN has not been *assigned*). Program staff, in considering the change, determined that greater flexibility could make a difference for applicant families who adopt a child or add a foster child within the 6-month period preceding their admission to the program; such a child may already have been assigned a SSN, but there may be circumstances that make it difficult for the adoptive or foster family to obtain the documentation in a timely fashion.

Mandatory or discretionary: Mandatory

Effective date: April 7, 2016

Attachment B: Definition of extremely low–income families

Regulation: 24 CFR §§5.603, 903.7, and 960.102

Programs to which this provision applies: Housing Choice Voucher (including project-based voucher), public housing, Section 8 Moderate Rehabilitation

Description of change: These regulations have been revised to reflect the new statutory definition of an extremely low–income (ELI) family. Section 238 of HUD's FY 2014 Appropriations Act[1] amended Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a) to define ELI families as very low–income families whose income does not exceed the higher of 30 percent of the area median income or the federal poverty level. The federal poverty level provision in the definition of ELI families does not apply in the case of public housing agencies or projects located in Puerto Rico or any other territory or possession of the United States.

Background: Previously, there was no statutory definition of ELI families, and the regulatory definition did not take the federal poverty level into consideration. The adoption of a statutory definition that takes the federal poverty level into account is intended to increase access to HUD rental assistance for working-poor families in areas where median incomes are so low that a family with a full-time worker may have an income that exceeds 30 percent of the area median income, even though the family's income is below the federal poverty level. The revised definition ensures that such a family will not be skipped over on the waiting list as a result of the ELI admission targeting requirements in the public housing and Housing Choice Voucher programs. For the public housing program, not less than 40 percent of the units that become available per PHA fiscal year must be made available for occupancy by ELI families. For the HCV program, not less than 75 percent of new admissions from the PHA waiting list during the PHA fiscal year must be ELI families.

HUD determines the ELI limits for all areas in the United States annually. New Housing Choice Voucher and public housing income limits are generally issued in March. The ELI limits are available at the following Web site: https://www.huduser.gov/portal/datasets/fmr.html.

PHAs do not need to research the federal poverty level to comply with the ELI definition, since the HUD-published ELI dollar amounts are calculated in accordance with the new definition and reflect the higher of 30 percent of area median income or the federal poverty level for the metro area or non-metropolitan county. The ELI limits for each metropolitan area and non-metro county are listed by dollar amount and family size. When calculating the ELI limits, HUD uses the poverty guidelines issued by the Department of Health and Human Services for the 48 contiguous states and the District of Columbia (lower 48 states), Alaska, and Hawaii.

In some communities with very low median incomes, the federal poverty level may equal or exceed the very low–income (VLI) limit for some or all household sizes. (In general, a VLI family is defined as a family whose income does not exceed 50 percent of the area median income.) In these relatively rare instances, the ELI limit is set at the VLI limit, and consequently any family whose income meets the VLI limit also qualifies as an ELI family. From a practical

[1] HUD's 2014 Appropriations Act is Title II of Division L of Public Law 113-76, 128 Stat. 5, approved January 17, 2014.

standpoint, in these rare circumstances, this simply means that a VLI/ELI family who is admitted to the HCV or public housing program counts as an ELI family for ELI targeting requirements.

Mandatory or discretionary: Mandatory

Effective date: This provision has been in effect since July 1, 2014. (See *Federal Register* Notice 79 FR 35940, "HUD Implementation of Fiscal Year 2014 Appropriations Provisions on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition and Utility Allowances").

Attachment C: Exclusion of mandatory education fees from income

Regulation: 24 CFR §5.609(b)(9)

Programs to which this provision applies: Housing Choice Voucher (including project-based voucher), public housing, Section 8 Moderate Rehabilitation

Description of change: This provision amends the definition of "income" to exclude from calculations of individual income any financial assistance received for mandatory fees and charges (in addition to tuition). Notice PIH 2015–21 provides guidance as to what constitutes such fees. The notice discusses the definitions of tuition and fees used by the Department of Education, provides examples on calculating income, and explains how to verify fee information.

For the *public housing program*, there is no change. The example below shows how financial assistance is treated in the public housing program.

> Kim, a 22 year–old, married, participant in the public housing program, is enrolled in a nursing program at her local community college. She is receiving $7,000 in financial assistance to cover the full cost of tuition and fees of $6,000 for the academic year. The $6,000 includes:
>
> - $2,500 in tuition per semester (total $5,000) *plus*
>
> - $500 in individual fees (total $1,000)—athletic fee, writing laboratory fee, student center fee, science laboratory fee, technology fee—charged to every student per semester.
>
> In this example, the full amount of financial assistance Kim receives ($7,000) while participating in the program continues to be excluded from her annual income pursuant to 24 CFR § 5.609(c)(6).

For *section 8 programs* (HCV, PBV, Sec. 8 Mod. Rehab.), the amended definition of "income" may result in a change in how such income is calculated, as explained in the example below:

> Kim, a 22 year–old, married, participant in a section 8 program, is enrolled in a nursing program at her local community college. She is receiving $7,000 in financial assistance to cover the full cost of tuition and fees of $6,000 for the academic year. The $6,000 includes:
>
> - $2,500 in tuition per semester (total $5,000) *plus*
>
> - $500 in individual fees (total $1,000)—athletic fee, writing laboratory fee, student center fee, science laboratory fee, technology fee—charged to every student per semester.
>
> In this example, the excess $1,000 ($7,000 – $6,000) Kim received in financial assistance will be included in her annual income in accordance with 24 CFR 5.609(b)(9).
>
> Under HUD's previous definition of tuition, Kim's housing authority might have considered her income from financial assistance in excess of tuition to be $2,000 (excess of $1,000, as calculated above, plus total fees of $1,000) if her college's definition of tuition did not

include fees. Under HUD's new definition, Kim's housing authority will determine her excess financial assistance to be $1,000 rather than $2,000, because the required fees and charges are included with tuition.

Background: Many institutions of higher education have moved from a traditional, tuition-only structure to a new tuition-and-fee structure. Fees often include, but are not limited to, student service fees, student association fees, student activities fees, and laboratory fees. HUD believes that inclusion of many of these required fees within the definition of tuition will increase opportunities for its participants to further their education.

Mandatory or discretionary: Mandatory

Effective date: April 7, 2016

Attachment D: Streamlined annual reexamination for fixed sources of income

Regulation: 24 CFR §§960.257, 982.516

Programs to which this provision applies: Housing Choice Voucher (including project-based voucher), public housing

Description of change: This provision offers PHAs the discretion to adopt a streamlined income determination for any family member with a fixed source of income. Note that the family member may also have non-fixed sources of income, which remain subject to third-party verification. Upon request of the family, the PHA must perform third-party verification of all income sources. Note that this provision pertains only to the verification of sources of income; PHAs must continue to conduct third-party verification of deductions.

For purposes of this Notice, the term "fixed-income" includes income from:

- Social Security payments, to include Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI);
- Federal, state, local, and private pension plans; and
- Other periodic payments received from annuities, insurance policies, retirement funds, disability or death benefits, and other similar types of periodic payments.

The determination will be made by applying a verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount. The COLA or current interest rate applicable to each source of fixed income must be obtained either from a public source or from tenant-provided, third-party generated documentation. In the absence of such verification for any source of fixed income, third-party verification of income amounts must be obtained.

This provision is available for program participants only and may be implemented at the family's next annual reexamination following adoption of the provision in the PHA's ACOP or Admin. Plan. The provision is not available for program applicants; in the initial year in which a streamlined income determination is made, the COLA must be applied to a source of income that has been verified previously.

In the initial year of employing a streamlined income determination, a PHA must determine whether a source of income is fixed. A PHA may do this by comparing the amount of income from the source to the amount generated during the prior year. If the amount is the same or if it has changed only as a result of a COLA or due to interest generated on a principal amount that remained otherwise constant, then the source is fixed. A PHA may also make such a determination by requiring a family to identify as to which source(s) of income are fixed. A PHA must document in the tenant file how it made the determination that a source of income is fixed.

For the second income determination involving a family member whose income was adjusted previously using a streamlined income determination, the adjustment would be made to the previously determined income amount (i.e., in year two, the COLA is applied to the year one

income amount, as previously adjusted by a COLA). For any family member whose income is determined pursuant to a streamlined income determination, *third-party verification of all income amounts for all family members must be performed at least every three years*. This means that, for the third income determination involving a family member whose income had been adjusted twice using a streamlined income determination, the PHA would need to obtain third-party verification of *all* income amounts. This also means that if a family member with a fixed-income source is added to the family during year two, for example, then the PHA must obtain third-party verification of all income amounts for that family member at the next reexamination if the PHA wishes to have all family members with fixed incomes on the same schedule with respect to streamlined annual reexaminations.

Example: Streamlined income determination for program participant's first reexamination following PHA's adoption of provision

	Under previous regulation	**Under this regulation**
January 2016 — baseline year	Carl's income consists of 90% fixed sources and 10% non-fixed sources. The PHA must verify all income amounts using third-party verification.	(not yet implemented)
January 2017	Carl's income consists of 90% fixed sources and 10% non-fixed sources. The PHA must verify all income amounts using third-party verification.	Carl's income is reported to be 90% fixed sources and 10% non-fixed sources The PHA must compare the amount of income from the fixed sources to the amount generated during the prior year; if the amounts are the same or if they have changed only as a result of the application of a COLA or due to interest generated on a principal amount that remained otherwise constant, then the amounts are fixed. The PHA may adjust the fixed sources by a COLA or current interest rate obtained from a public source or from tenant-provided, third-party generated documentation. The PHA must verify the non-fixed amounts using third-party verification
January 2018	Carl's income consists of 90% fixed sources and 10% non-fixed sources. The PHA must verify	Carl's income is reported to be 90% fixed sources and 10% non-fixed sources The PHA may adjust the fixed sources by a COLA or current interest rate obtained from a public source or from tenant-

	all income amounts using third-party verification.	provided, third-party generated documentation. The PHA must verify the non-fixed amounts using third-party verification
January 2019	Carl's income consists of 90% fixed sources and 10% non-fixed sources. The PHA must verify all income amounts using third-party verification.	Carl's income is reported to be 90% fixed sources and 10% non-fixed sources The PHA must verify all income amounts using third-party verification.

Background: Existing guidance (Notice PIH 2010–19) explains how to identify and verify existing sources of income using HUD's Enterprise Income Verification system. Non-fixed sources of income remain subject to full income-verification requirements. For example, if a family member has both fixed and non-fixed sources of income, this provision may be applied only to the fixed sources of income.

Mandatory or discretionary: Discretionary. Prior to adopting streamlined income determinations, PHAs must amend any policies governing income determinations to identify the sources of income that will be considered eligible for a streamlined income determination. Note: A PHA that adopts this provision must continue to obtain family member signatures on the consent forms required by 24 CFR 5.230, as if this provision had not been adopted.

Effective date: April 7, 2016

Attachment E: Earned income disregard

Regulation: 24 CFR §§5.617, 960.255

Programs to which this provision applies: Housing Choice Voucher (including project-based voucher), public housing

Description of change: The new regulatory provisions limit to 24 straight months the time period during which a family member is eligible to receive the benefit of the earned income disregard (EID), which streamline the administration of the EID by eliminating the requirement for PHAs to track family member changes in employment over a 4-year period. There are no changes to EID eligibility criteria, the benefit amount of the EID, the single lifetime eligibility requirement, or the ability of the applicable family member to stop and restart employment during the eligibility period.

Under the previous regulations, families were eligible to receive the EID benefit for no more than 24 months, which could be spread across a 48-month time period to account for potential changes in the employment status of the family member whose original employment caused the family to be eligible for EID. PHAs were required to track the employment of such family members and stop and start the EID benefit accordingly. The final rule provides:

- Once a family member is determined to be eligible for the EID, the 24–calendar month period starts;
- If the family member discontinues the employment that initially qualified the family for the EID, the 24–calendar month period continues;
- During the 24–calendar month period, EID benefits are recalculated based on changes to family member income and employment (no change from current practice);
- During the first 12–calendar month period, a PHA must exclude all increased income resulting from the qualifying employment of the family member. After the first 12–calendar month period, the PHA must exclude from annual income of the family at least 50 percent of any increase in income of such family member as a result of employment over the family member's income before the qualifying event (i.e., the family member's baseline income);
- The EID benefit is limited to a lifetime 24-month period for the qualifying family member;
- At the end of the 24 months, the EID ends regardless of how many months were "used."

Example: Illustration of differences between previous and new EID implementing regulations

	EID under previous regulation	**EID under this regulation**
January 2017 (month one)	Carl begins working and is eligible for EID. 100% of Carl's increase in earned income is excluded.	Carl begins working and is eligible for EID. 100% of Carl's increase in earned

		income is excluded.
July 2017 (month seven)	Carl is laid off. EID "clock" stops.	Carl is laid off. EID "clock" continues to run.
January 2018 (month 13)		Carl's second 12-month period begins.
February 2018 (month 14)	Carl begins working again. 100% of the increase in earned income due to Carl's employment is excluded.	Carl begins working again. 50% of the increase in earned income due to Carl's employment is excluded.
July 2018 (month 19)	Carl's second 12-month period begins. 50% of the increase in earned income due to Carl's employment is excluded.	
December 2018 (month 24)		This is the final month during which Carl receives his EID benefit.
June 2019 (month 30)	Carl has benefited from the EID for 24 months total. This is the final month during which Carl receives his EID benefit.	

Families that currently benefit from the EID, or who become eligible prior to the effective date of changes to the ACOP/Admin. Plan/PHA Plan, are eligible to receive the EID benefit for 24 months over a 48-month period, as was in effect prior to the effective date of this provision.

PHAs are advised to notify all participants and applicants who are eligible for the EID of their eligibility.

Background: The earned income disregard is designed to promote self-sufficiency for certain families in public housing and families with disabilities in the HCV program who meet the definition of a "qualified family." This provision does not change the eligibility criteria for EID or how the EID benefit is calculated. For information about the EID, please see the HCV or Public Housing Occupancy Guidebooks.

Mandatory or discretionary: Mandatory

Note that PHAs operating the public housing program have the discretion to establish income exclusions beyond what is required of the EID, for the public housing program. As such, a PHA could establish alternative EID requirements to encourage employment among public housing

program participants, but these requirements may not be more restrictive than the minimum EID benefit required under 24 CFR §§5.617, 960.255.

Effective date: May 9, 2016

Attachment F: Family declaration of assets under $5,000

Regulation: 24 CFR §§960.259, 982.516

Programs to which this provision applies: Housing Choice Voucher (including project-based voucher), public housing

Description of change: Under this provision, a PHA must obtain third-party verification of all family assets upon admitting a family to the HCV or public housing program and then again at least every 3 years thereafter. During the intervening annual reexaminations, a PHA has the discretion under this provision to accept a family's declaration that it has total net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration. If a family submits such a declaration, then the PHA does not need to request supporting documentation (e.g., bank statements) to verify the assets or the amount of income expected to be received from those assets. The family's declaration of total assets must show each asset and the amount of income expected from that asset. The total amount of income expected from all assets must be less than or equal to $5,000. The total amount of the expected income from assets will be the family's "final asset income," and must be entered in field 6j of Form HUD-50058.

A PHA may obtain a family's declaration of assets under $5,000 at the family's next interim or annual reexamination following adoption of the provision in the PHA's ACOP or Admin. Plan.

PHAs are required to have all family members 18 years of age and older sign the family's declaration of total assets. For ease of implementation, a PHA may wish to require families to submit a declaration of assets along with the consent forms that are required pursuant to 24 CFR 5.230. A family that knowingly submits false information is subject to a civil penalty, plus damages, under the False Claims Act (31 U.S.C. 3729).

Whenever a family member is added, a PHA must obtain third-party verification of that family member's assets. At the next annual reexamination of income following the addition of that family member, a PHA must obtain third-party verification of all family assets if the addition of that family member's assets puts the family above the $5,000 asset threshold. If the addition of that family member's assets does not put the family above the $5,000 asset threshold, then the PHA is not required to obtain third-party verification of all family assets at the next annual reexamination of income following the addition of the family member; however, third-party verification of all family assets is required at least every 3 years.

If a PHA adopted the self-certification of assets provision in Notice PIH 2013–03 and wishes now to adopt the provision described in this Notice, then the PHA must obtain third-party verification of all assets of any family at the family's next income redetermination if that family has provided self-certification of assets for the two previous income redeterminations.

Background: The requirement to verify assets is time-consuming for PHAs and families. In addition, assets of $5,000 or less have little to no effect on family rental payments. This provision is intended to alleviate the burden on PHAs and families of verifying such assets; it also brings the HCV, PBV, and public housing programs in line with Internal Revenue Service guidance for the federal Low Income Housing Tax Credit program. For the LIHTC program,

housing credit agencies and owners are permitted to accept a certification from families that their assets do not exceed $5,000.

Mandatory or discretionary: Discretionary

Effective date: April 7, 2016

Attachment G: Utility reimbursements

Regulation: 24 CFR §§960.253, 982.514

Programs to which this provision applies: Housing Choice Voucher (including project-based voucher), public housing

Description of change: This provision permits PHAs to make utility reimbursement payments quarterly, rather than monthly, if the total quarterly reimbursement payment due to a family is equal to or less than $45 per quarter. PHAs may make reimbursement payments retroactively or prospectively. A PHA that adopts this provision, and chooses to make reimbursement payments retroactively, must permit a family to request a hardship exemption, in accordance with 24 CFR 5.630(b)(2). If a family receives a hardship exemption, then the PHA may either reimburse the family on a monthly basis or it may make *prospective* payments to the family, on a quarterly basis.

Quarterly payments must be made at least once per calendar quarter. Prospective payments must be made prior to the start of each quarter; retroactive payments must be made before the end of each quarter, as shown below.

Time period covered by payment	PHA Must Make the Reimbursement Available to the Family No Later Than	
	Prospective	Retroactive
January – March	December 31	March 31
April – June	March 31	June 30
July – September	June 30	September 30
October – December	September 30	December 31

The process for determining the utility reimbursement amount and the ability of PHAs to pay the family or the utility provider directly are not affected by this provision. Nor does the provision affect a PHA's ability to make reimbursements via electronic deposit.

Upon admission to the program or at recertification, the staff person completing Form HUD-50058 will note whether the utility reimbursement is $15 per month or less. If it is, then the PHA must inform the family whether reimbursement will be retroactive or prospective on a quarterly basis. If the PHA's policy is to reimburse retroactively, then the PHA must also inform the family that they may request a hardship exemption. If the family requests and receives a hardship exemption, then the PHA may either reimburse the family on a monthly basis or it may make prospective payments on a quarterly basis.

If a family leaves the program with an outstanding credit from the PHA for a utility reimbursement, the PHA shall reconcile the credit with the family prior to the expiration of the lease. Please note that, under the HCV program, a family may remain in the unit after leaving the

program. The expiration of the lease does not therefore impact when the PHA reconciles the credit with the family. Reconciliation should take place when the HAP contract terminates or shortly thereafter (i.e., no later than 30 calendar days after HAP contract termination).

Background: Prior to issuance of this regulation, utility reimbursements of any amount were required to be paid monthly.

Mandatory or discretionary: Discretionary. Prior to adopting this quarterly reimbursement provision, a PHA must amend any policies governing rental payments. The policy must state whether the PHA will make quarterly payments retroactively or prospectively. If the PHA will make payments retroactively, then the policy must state whether the PHA's hardship exemption will take the form of monthly reimbursement or quarterly prospective payment. The policy must include a statement about how the PHA will reconcile any outstanding reimbursement due to a family if the family leaves the program.

Effective date: April 7, 2016

Attachment H: Public housing rents for mixed families

Regulation: 24 CFR §5.520(d)

Program to which this provision applies: Public housing

Description of change: This provision changes the methodology for calculating public housing rents for mixed families by requiring PHAs to use the established flat rent applicable to the units. Currently, PHAs use the more complicated system to calculate prorated rent for families by requiring PHAs to determine the maximum rent by establishing the 95th percentile of all total tenant payments (TTP) for each bedroom size. Further, this rule eliminates an error in the current regulations and in HUD's PIC system which incorrectly reduces the rent of some mixed-families below their TTP. A mixed family is a family whose members include those with citizenship or eligible immigration status *and* those without citizenship or eligible immigration status.

Under this rule, PHAs must complete the following steps:

- Step 1. Determine the total tenant payment in accordance with 24 CFR §5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

- Step 2. Family maximum rent is equal to the applicable flat rent for the unit size to be occupied by the family.

- Step 3. Subtract the total tenant payment from the family maximum rent. The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

- Step 4. Divide the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy."

- Step 5. Multiply the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members"). The product of this calculation is the "eligible subsidy."

- Step 6. The mixed family TTP is the maximum rent minus the amount of the eligible subsidy.

- Step 7. Subtract any applicable utility allowance from the mixed family TTP. The result of this calculation is the mixed family tenant rent.

When the mixed family's TTP is greater than the maximum rent, the PHA must use the TTP as the mixed family TTP. . Note: A warning message will appear when the family's TTP is entered into field 10p of PIC. This warning message is a workaround for purposes of implementing this provision.

This method of prorating assistance applies to new admissions and annual reexaminations after the effective date of the regulation.

The following tables provide examples of the impact of this provision.

Example 1: Family of 4 with an annual income of $20,000, and one family member that is not eligible to receive subsidy. The 95th percentile TTP is $548 while the flat rent is $600. The applicable utility allowance is $100 per month.

Steps	Previous Requirements	Requirements in Streamlining Rule
Step 1: Determination of TTP	$500	$500
Step 2: Determination of Maximum Rent	95th percentile of all TTPs paid in the public housing program	Applicable flat rent
Step 3: Determination of Family Maximum Subsidy	$548 – $500 = $48	$600 – $500 = $100
Step 4: Determination of Member Maximum Subsidy	$48 \ 4 = $12	$100 \ 4 = $25
Step 5: Determination of Eligible Subsidy	3 * $12 = $36	3 * $25 = $75
Step 6: Determination of Mixed-Family TTP	$548 – $36 = $512	$600 – $75 = $525
Step 7: Determination of Mixed-Family Rent	$512 – $100 = $412	$525 – $100 = $425

Example 2: Family of 4 with an annual income of $20,000 and one family member that is not eligible to receive subsidy. The 95th percentile rent is $400 and the flat rent is $480. The applicable utility allowance is $100 per month.

Steps	Previous Requirements	Requirements in Streamlining Rule
Step 1: Determination of TTP	$500	$500
Step 2: Determination of Maximum Rent	95th percentile of all TTPs paid in the public housing program	Applicable flat rent
Step 3: Determination of Family Maximum Subsidy	$400 – $500 = ($100)	$480 – $500 = ($20)
Step 4: Determination of	($100) / 4 = ($25)	($20) / 4 = ($5)

Member Maximum Subsidy		
Step 5: Determination of Eligible Subsidy	3 * ($25) = ($75)	3 * ($5) = ($15)
Step 6: Determination of Mixed-Family TTP	$400 – ($75) = $475	$480 – ($15) = $495 Because the maximum rent is less than the family TTP, a PHA must use this family's TTP ($500) for the Mixed-Family TTP.
Step 7: Determination of Mixed-Family Rent	$475 – $100 = $375	$500 – $100 = $400

Background: PHAs are required to calculate rent for mixed-families differently than they calculate rent for non-mixed families. For information on mixed families in public housing, please see the public housing occupancy guidebook.

Mandatory or discretionary: Mandatory

Effective date: April 7, 2016

Attachment I: Tenant self-certification for Community Service and Self-Sufficiency Requirement

Regulation: 24 CFR §§960.605, 960.607

Program to which this provision applies: Public housing

Description of change: HUD will provide guidance on this provision in a separate notice.

Background: All public housing residents that are not otherwise exempt are required to complete 8 hours of community service or participation in self-sufficiency activities per month. For more information on the administration of CSSR, please see the public housing occupancy guidebook.

Mandatory or discretionary: Discretionary

Effective date: April 7, 2016

Attachment J: Public housing grievance procedures

Regulation: 24 CFR §§966.52 through 966.57

Program to which this provision applies: Public housing

Description of change: This provision eliminates many prescriptive requirements related to the process for obtaining a hearing and the procedures governing the hearing, and permits PHAs to establish local requirements regarding the process for obtaining a grievance hearing. This provision does not prevent a PHA from maintaining the current procedures in place immediately before this final rule. Rather, it eliminates many prescriptive requirements that are not statutory. Specifically, this provision:

- Redefines a hearing officer to include a single hearing officer or a panel of hearing officers;
- Eliminates specific procedures that a complainant must undertake to obtain a hearing;
- Eliminates the requirements related to how a PHA may choose a hearing officer, including the requirement to consult with residents about the PHA choice for the hearing officer;
- Requires PHAs to incorporate policies for selecting a hearing officer in the dwelling lease and to revise the lease accordingly;
- Eliminates the provision that outlines the consequences to a complainant for failure to properly request a hearing;
- Eliminates the requirements regarding how a grievance must be submitted in the informal settlement process;
- Eliminates a provision that would require an escrow deposit by the complainant in any grievance related to tenant rent;
- Eliminates a requirement that a hearing will be scheduled only after a complainant has adequately requested a hearing, completed an informal settlement process, and paid rent due into escrow if necessary;
- Eliminates the requirement that a hearing be conducted informally;
- Requires that a written notification specifying the time, place, and the procedures governing the hearing must be delivered to the complainant and the appropriate official;
- Eliminates the requirement that a PHA must make available for inspection a previous hearing officer decision for prospective complainants;
- Requires PHAs to create a log of hearing officer decisions and make the log available to the hearing officer, prospective complainants and his representative. At a minimum, the log must include: the date of the hearing decision, the general reason for the grievance hearing (failure

to pay rent, community service and self-sufficiency noncompliance, etc.) and whether the decision was in the favor of the complainant or the PHA.

Background: Public housing grievance procedures ensure adequate due process regarding adverse actions against public housing tenants. For information about grievance procedures beyond what is addressed in this Notice, please see the public housing occupancy guidebook.

Mandatory or discretionary: Discretionary

Effective date: April 7, 2016

Attachment K: Biennial inspections and the use of alternative inspection methods and inspection timeframes

Regulation: 24 CFR §§982.405, 983.103

Programs to which this provision applies: Housing Choice Voucher (including the project-based voucher program)

Description of change: This provision offers PHAs the discretion to conduct unit inspections biennially rather than annually, for both the HCV and PBV programs. It also authorizes the use of alternative inspection methods for periodic inspections, such as inspections performed by HUD or conducted pursuant to the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs). PHAs have the discretion to adopt either or both of these flexibilities.

These flexibilities are applicable only to periodic unit inspections conducted during the term of the assisted tenancy. Periodic inspections are those that a PHA is required to conduct at least biennially, while a HCV participant is living in a unit. Periodic inspections do not include inspections conducted prior to the initial term of the lease or to interim inspections. Under the PBV program, the flexibilities do not apply to inspections required prior to the execution of the HAP contract pursuant to 24 CFR §983.103(a) and (b).

Note that under the homeownership option, PHAs are required only to conduct pre-contract inspections; they have the *option* of conducting periodic inspections. If a PHA conducts periodic inspections, then it may do so biennially and/or by means of alternative methods, pursuant to the requirements detailed in this Notice (e.g., update of Admin. Plan, etc.).

Biennial inspections. This provision authorizes PHAs to conduct unit inspections every other year instead of annually. Permitting biennial inspections for HCV units will reduce the administrative and financial burden on PHAs and high-performing landlords and enable PHAs to concentrate their inspection resources on the more marginal and higher-risk units. Additionally, this provision can assist PHAs in avoiding duplicative inspections at properties where there are other program inspections, such as under the LIHTC program.

A PHA that moves to biennial inspections for all of the units in its portfolio does not need to update its Admin. Plan to reflect the change. By contrast, a PHA that continues to perform inspections annually across its portfolio must update its Admin. Plan; this is the case because the new requirement is that inspections take place at least biennially, and the PHA is exercising the discretion to continue with annual inspections. Likewise, a PHA that employs both annual and biennial inspections must adopt policies in its Admin. Plan that specify the circumstances under which biennial inspections will be employed and the circumstances under which annual inspections will be employed. These policies must be applied uniformly. For example, a PHA might move to biennial inspections for units in properties that are already inspected annually under a local housing code enforcement program or any unit that receives a “pass” score under HQS for two or more years in a row. A PHA might continue with annual inspections of any units not inspected annually under another program or any unit that had health and safety deficiencies during its previous HQS inspection.

While this provision is intended to offer administrative relief to PHAs, it is not intended to do so at the expense of decent, safe, and sanitary housing. PHAs are discouraged from establishing policies that specify the use of biennial inspections based on factors unrelated to an owner's record of providing housing that is decent, safe, and sanitary, such as the distance of the unit from the PHA's office. While factors such as distance may be taken into account, HUD encourages PHAs to consider factors other than distance — such as the record of the unit itself — in deciding whether to employ biennial inspections.

PHAs should continue to submit the Form HUD-50058 into the Public Housing Information System (PIC) as currently required. The SEMAP module has been modified to accept inspection dates of greater than 12 months since last inspection. Inspection dates submitted into PIC will now be counted as late if they show a time of greater than 26 months since the previous inspection.

Alternative inspection methods. The purpose of this provision is to authorize inspection by methods other than HQS. Inspection by such alternative methods is limited, as described below.

PHAs may rely upon two different categories of alternative inspections: (1) inspections conducted by HUD's Real Estate Assessment Center (REAC) or under the HOME or LIHTC program; or (2) other inspection methods that meet or exceed HQS and have been approved by HUD's Real Estate Assessment Center. No matter which option a PHA selects, it must amend its Admin. Plan prior to employing such option.

- REAC/HOME/LIHTC inspections. Inspections covered by REAC, HOME, and LIHTC employ unit sampling. The regulation requires HCV and PBV units be included in the universe of units forming the basis of the sample. For example, if a 100-unit property includes 20 units that are occupied by HCV-assisted families or are under a PBV HAP contract, then those 20 units must be included in the universe of units from which the sample is pulled. This requirement does not mean that the 20 units must be included in the actual sample; it means only that the units must have the potential to be selected for the sample by virtue of being included in the universe of sampled units.

- Other inspection methods. In order to rely on inspections other than those covered by REAC, HOME, or LIHTC, a PHA must submit to HUD the inspection method and an analysis showing that the method meets or exceeds HQS. A PHA may not rely upon such a method unless and until HUD has reviewed and approved use of the method. Once HUD has approved the inspection method, then the PHA must amend its Admin. Plan, making clear the specific properties or types of properties for which the inspection method will be employed. If the inspection method relies upon sampling, then the HCV/PBV units must be included in the population of units forming the basis of the sample, as described above.

  HUD will not approve a method that fails to assess the performance requirements and acceptability criteria of unit inspection standards outlined at 24 CFR §982.401, or any successor standard. As with HQS, HUD may approve variations to alternate inspection methods only for the purposes outlined at 24 CFR §982.401(a)(4)(ii), and then only if the variations meet the standard for approval at 24 CFR §982.401(a)(4)(iii). If a method fails to meet these requirements, then HUD will not approve its use.

Mixed-finance properties and triennial inspections. For purposes of this provision, a mixed-finance property is defined as a property that is assisted under the PBV program and is financed under a federal, state, and/or local housing program. A PHA may rely on an inspection of a mixed-finance property conducted using an alternative inspection method to meet the requirement at 24 CFR 982.405(a), if the inspection happens no less frequently than triennially.

As with all other inspection reports required under § 982.158(f)(4), reports for alternative inspection methods must be obtained by the PHA from the entity inspecting the units. Such reports must be available for HUD inspection for at least three years from the date of the latest inspection.

PHAs must receive inspection reports and other data from any entity conducting an inspection using an alternative method within 5 business days of the inspection. Prompt analysis of inspection results enable a PHA to determine if any identified deficiencies would result in HQS failure. Memorandums of understanding or other agreements could be used by the PHA and other entity to ensure timely data submission.

PHAs that use inspections conducted with alternative methods, including methods that employ sampling, must continue to submit the Form HUD-50058 into the PIC system in the same manner, which includes providing the date of last inspection, and the date the unit last passed inspection. For methods that employ sampling, the date of the inspection will be used for all units in the universe, even if those units were not selected for inspection. The SEMAP system has been modified to accept inspection dates of greater than 12 months since last inspection. Inspection dates submitted into PIC will now be counted as late if they show a time of greater than 26 months since last inspection.

Limitations on the use of alternative inspection methods. A PHA may rely upon an alternative inspection method to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a) in two circumstances:

- In the case of an alternative method that employs a “pass/fail” scoring system, the property inspected pursuant to such alternative method receives a “pass” score. A PHA may rely on an alternative method if the property receives a “pass” score, even if deficiencies are identified.

- In the case of an alternative method that results in a list of deficiencies (without a “pass/fail” designation), the PHA determines that none of the cited deficiencies would have resulted in a “fail” score under HQS.

Under any circumstance in which a PHA is prohibited from relying on an alternative inspection method for a property, the PHA must promptly conduct an HQS inspection of all units occupied by voucher program participants, and follow HQS procedures to remedy any identified deficiencies, as required under the HQS inspection method.

Duty to inspect. Irrespective of the biennial/alternative inspection method provision, a PHA has a duty to inspect a unit when a participant family or government official reports a condition that violates HQS. If the condition is life-threatening (i.e., the PHA would require the owner to make the repair within no more than 24 hours in accordance with § 982.404(a)(3)), then the PHA must

inspect the unit within 24 hours of when the PHA receives the notification. If the condition is not life-threatening (i.e., the PHA would require the owner to make the repair within no more than 30 calendar days), then the PHA must inspect the unit within 15 days of when the PHA receives the notification. In the event of extraordinary circumstances, such as if a unit is within a presidentially declared disaster area or if a natural or manmade disaster makes inspection of a unit infeasible, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection can be made. In such circumstances, a PHA must submit a waiver request to its local HUD field office, stating the regulation from which a waiver is requested and including an explanation of why it is needed.

Background: The biennial inspections provision was put into place to enable PHAs to expend relatively fewer resources inspecting units that perform consistently well or are typically inspected by more than one oversight entity and relatively more resources inspecting other units. The alternative inspections provision is intended to address the fact that a property that has more than one funding source may be subject to more than one physical inspection using more than one method. The goal of this provision is to eliminate duplicative inspections while assuring that families with HUD assistance have access to decent, safe, and sanitary housing that is in good repair.

Mandatory or discretionary: PHAs are now authorized to inspect units at least biennially during the term of the assisted tenancy. PHAs have the *discretion*, however, to inspect units more frequently than required. PHAs also have the *discretion* to use alternative inspection methods in accordance with HUD requirements. In those cases where a PHA elects to inspect more frequently than biennially, for some or all of its units, or use an alternative inspection method, its Admin. Plan must be revised.

At any time, if a participant family or government official reports a condition that violates HQS, a PHA must inspect the subject unit within the timeframes described above.

Effective date: This provision has been in effect since July 1, 2014. (See *Federal Register* Notice 79 FR 35940, “HUD Implementation of Fiscal Year 2014 Appropriations Provisions on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition and Utility Allowances”).

Attachment L: Housing Quality Standards reinspection fee

Regulation: 24 CFR §982.405

Programs to which this provision applies: Housing Choice Voucher (including project-based voucher)

Description of change: This provision offers PHAs the option to establish a reasonable fee to owners for a reinspection under two circumstances: (1) if an owner notifies the PHA that a deficiency cited in the previous inspection has been repaired and a reinspection reveals that it has not and/or (2) if the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing has not been corrected.

A fee will be considered reasonable if it reflects local practices for the establishment of similar fees. PHAs may wish to inquire with local authorities regarding how such fees are established.

PHAs must not apply the fee to an owner for:

- deficiencies caused by the participant family;
- initial inspections;
- regularly scheduled inspections;
- an instance in which an inspector was unable to gain access to a unit; or
- new deficiencies identified during a reinspection. If new deficiencies are uncovered during reinspection, a PHA should follow normal procedures to address these newly identified deficiencies.

An owner who is assessed a fee may not pass the fee on to a family.

In the case of PHA-owned units, inspections and re-inspections must be performed by a HUD-approved entity in accordance with 24 CFR §982.352(b)(3) and §983.103(f)(1)). In this circumstance, and in any case in which inspections are performed by an entity other than the PHA (e.g., unit of local government, contractor), the details of any reinspection fee must be spelled out in the contractual arrangement between the PHA and the entity. (Notice PIH 2015–05 addresses the inspection of PBV units and steps that must be taken in the event the independent entity discovers an HQS violation.)

Fees collected under this reinspection fee authority will be considered unrestricted net assets.

Background: It is burdensome and costly for PHAs to have to inspect units multiple times.

Mandatory or discretionary: Discretionary. A PHA that intends to adopt a reinspection fee must amend its Admin. Plan to make clear when a fee will be assessed. For example, it must make clear whether the fee will be assessed after the first reinspection or after the second reinspection.

The Admin. Plan must also make clear, in each circumstance, what the specific fee amount will be.

In determining whether to adopt a fee, a PHA must ensure that such a fee is not prohibited by state or local law. PHAs are encouraged to consider whether the adoption of a fee may deter landlords from participating in the HCV or PBV programs. For example, if the allotted time for repairs has elapsed and a reinspection reveals that a deficiency cited in the previous inspection that the owner is responsible for repairing has not been corrected, a PHA is already required to take remedial action and will have to decide whether to assess a fee, as well, in accordance with their Admin. Plan.

Effective date: April 7, 2016

Attachment M: Exception payment standards for providing reasonable accommodations

Regulation: 24 CFR §§982.503, 982.505

Program to which this provision applies: Housing Choice Voucher

Description of change: This provision authorizes a PHA to approve a payment standard of not more than 120 percent of the FMR without HUD approval if requested as a reasonable accommodation by a family that includes a person with a disability.

A PHA that adopts this provision must maintain documentation that shows:

- a rent reasonableness analysis was conducted in accordance with the HCV program regulations at 24 CFR 982.507;
- the family requested lease approval for the unit and requested an exception payment standard as a reasonable accommodation; and
- the unit has features that meet the needs of a family member with disabilities. For example, a unit may be suitable because of its physical features or for other reasons, such as having the requisite number of bedrooms, location on an accessible transit route, or proximity to accessible employment, education, services, or recreation.

A PHA may accept a verbal request for a reasonable accommodation from a family. PHAs are advised to make clear in their Admin. Plan whether the request must be in writing and/or include supporting documentation, for example from a medical professional.

Background: Under the preceding regulations, a PHA had to request a waiver from a HUD Field Office for an exception payment standard above 110 percent of the FMR, consuming considerable administrative time and resulting in delays that, in some cases, caused families to miss out on desired units. Under this provision, a PHA may approve a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with disabilities.

Mandatory or discretionary: Discretionary

Effective date: April 7, 2016

Attachment N: Family income and composition: regular and interim examinations

Regulation: 24 CFR §§982.516(c) through (e)

Program to which this provision applies: Housing Choice Voucher

Description of change: This provision eliminates the requirement that a voucher agency conduct a reexamination of income whenever a new family member is added. The provision does *not* eliminate the requirement to verify other aspects of program eligibility (e.g., SSNs, criminal history, etc.), nor does it eliminate the requirement to perform annual reexaminations of family income (for example, if that happens to be the point at which a new family member is added); it simply eliminates the requirement to perform an interim reexamination of income whenever a new family member is added.

A PHA that adopts this provision must make clear in its Administrative Plan how it will address the addition of a new family member under the age of 6 years, in the event the new family member is added at a time other than during a reexamination. Per 24 CFR §5.216(e)(2)(ii)(B), such a family member is to be counted as a member of the assisted household, meaning that the family becomes entitled to the dependent deduction. A PHA that adopts this provision may decide, for example, to require a full reexamination of income whenever a child under the age of 6 years is added to a family. The PHA's policy on the addition of such family members must be spelled out in its Administrative Plan.

Background: This change makes it possible for a PHA, if it so chooses, to align interim examination requirements across the public housing and Housing Choice Voucher programs.

Mandatory or discretionary: Discretionary. PHAs retain the discretion to perform interim reexaminations when a new family member is added. An agency's ACOP for public housing and HCV Admin. Plan must describe the regular and interim examination policies.

Effective date: April 7, 2016

Attachment O: Utility payment schedules

Regulation: 24 CFR §982.517

Program to which this provision applies: Housing Choice Voucher

Description of change: This provision requires PHAs to use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the voucher size issued, as determined under the PHA subsidy standards.

In cases where a reasonable accommodation has been provided to a family that includes a person with disabilities, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family. To ensure compliance with this provision, PHAs may employ ad hoc reports that are available through the Inventory Management System/Public and Indian Housing Information Center, as explained in Notice PIH 2014–25 ("Over Subsidization in the Housing Choice Voucher Program").

Background: This provision was enacted as a cost-saving measure.

Mandatory or discretionary: Mandatory

Effective date: This provision has been in effect since July 1, 2014. (See *Federal Register* Notice 79 FR 35940, "HUD Implementation of Fiscal Year 2014 Appropriations Provisions on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition and Utility Allowances").

6/6/16 PIH 2016-09; Housing Choice Voucher (HCV) Family Moves with Continued Assistance, Family Briefing, and Voucher Term's Suspension

U.S. Department of Housing and Urban Development Public and Indian Housing

Special Attention of:
Directors of HUD Regional and Field Offices of Public Housing; PIH Program Center Coordinators; Public Housing Agencies (PHAs) Administering Housing Choice Voucher Programs

Notice PIH 2016 – 09 (HA)
Issued: June 06, 2016
Expires: This Notice remains effective until amended, superseded, or rescinded

Cross References:

HUD PIH Notices: 2015-6; 2012-42; 2012-4; 2011-65; 2011-3; 2008-43; 2007-5; 2004-12

Subject: Housing Choice Voucher (HCV) Family Moves with Continued Assistance, Family Briefing, and Voucher Term's Suspension.

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1. Purpose. This notice updates previous guidance relating to family moves with continued assistance and incorporates other related changes resulting from publication of the rule "Housing Choice Voucher Program: Streamlining the Portability Process" (hereafter portability rule) (80 FR 50564, published in the Federal Register on August 20, 2015). On September 2, 2015, a technical correction to the portability rule was published in the Federal Register. The technical correction (80 FR 52619) incorporates two provisions that were addressed in the preamble but were inadvertently omitted from the regulatory text. The two provisions include the requirement to provide as part of both the oral briefing and the information packet: (1) an explanation of the advantages of areas with low concentrations of low income families and (2) any information on selecting a unit that HUD makes available. You may find a side-by-side comparison of previous and new regulatory requirements here: http://portal.hud.gov/hudportal/documents/huddoc?id=Comparportrulechanges.pdf.

Specifically, this notice provides guidance on PHA administrative responsibilities related to family moves with continued assistance both inside and outside the PHA's jurisdiction. Additionally, this notice provides guidance on family briefings (24 CFR § 982.301) and suspension of the voucher term (24 CFR § 982.303).

PHAs are reminded that documentation demonstrating compliance with the requirements of this notice and regulation must be kept on file. HUD may request this documentation at any time.

2. Background. One of the key features of the HCV program is the mobility of the assistance. Regulations at 24 CFR § 982.353 provide that HCV participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located. Moves with continued assistance can occur both inside and outside of the PHA's jurisdiction. The term "portability" refers to the process of leasing a dwelling unit[1] with tenant-

[1] The term portability also refers to cases where families participating in the voucher homeownership option purchase units outside of the initial PHA's jurisdiction. See §982.636.

based HCV assistance outside of the jurisdiction of the PHA that initially issues the family its voucher (the initial PHA). The PHA that receives the family that has ported from the initial PHA's jurisdiction is called the receiving PHA. When a family moves under portability, the receiving PHA may choose to absorb the family into its own program or bill the initial PHA.

Program regulations covering moves with continued tenant-based assistance, where a family may move, and the responsibilities of the initial PHA and the receiving PHA are found at 24 CFR §§ 982.353 through 982.355. The following sections provide detailed guidance on the portability process and present changes made in regulation as a result of publication of the final portability rule. Regulatory changes on suspension of the term of the voucher and family briefings are also presented below.

3. Fair Housing and Equal Opportunity Requirements. PHAs must administer their HCV program in compliance with all applicable fair housing and other civil rights requirements, including the authorities cited at 24 CFR § 5.105(a). This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, titles II or III of the Americans with Disabilities Act, and HUD's Equal Access Rule. The PHA must also affirmatively further fair housing in accordance with its certification pursuant to 24 CFR § 903.7(o). If the PHA has completed an Assessment of Fair Housing conducted in accordance with the requirements of the Affirmatively Furthering Fair Housing rule at 24 CFR §§ 5.150-5.180, the PHA must certify that it will affirmatively further fair housing in accordance with 2015 revisions to 24 CFR 903.7(o) made by the AFFH final rule at 80 FR 42272-42371 (July 16, 2015). Under the July 16, 2015 revision, the PHA's certification that it will affirmatively further fair housing requires that it will (1) take meaningful actions to further the goals identified in its AFH, (2) that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing, and (3) that it will address fair housing issues and contributing factors in its programs, in accordance with 24 CFR 903.7(o)(3). If the PHA has not yet completed an Assessment of Fair Housing, the PHA must affirmatively further fair housing in accordance with its certification pursuant to 24 CFR 903.7(o) as implemented prior to July 16, 2015. *See* 24 CFR 5.151, 5.160(a)(3). Under this version of 24 CFR 903.7(o) that existed before July 16, 2015, a PHA must certify that it will affirmatively further fair housing by (1) examining

its programs or proposed programs, (2) identifying any impediments to fair housing choice within those programs, (3) addresses those impediments in a reasonable fashion in view of the resources available, (4) works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement, and (5) maintains records reflecting these analyses and actions, with some limited exceptions found in 24 CFR 903.2(b)(2). Affirmatively furthering fair housing under either scenario includes helping families use their vouchers to move from segregated to integrated areas, from racially or ethnically concentrated areas of poverty (R/ECAPs), and from areas with disparities in access to opportunity within its jurisdiction and through portability moves outside of the jurisdiction. See 24 CFR 982.53 for the equal opportunity requirements for the HCV program.

Questions relating to fair housing and equal opportunity requirements should be addressed to your local HUD fair housing office. You may find HUD's Office of Fair Housing and Equal Opportunity directory at the following address: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/fheodir.

a. **Reasonable Accommodations.** Notwithstanding any other provision of this notice, PHAs must consider requests for reasonable accommodations that are necessary for a qualified individual with a disability to benefit from the program (in accordance with the Fair Housing Act, Section 504 of the Rehabilitation Act, title II of the Americans with Disabilities Act and HUD's implementing regulations at 24 CFR 100.204, 24 CFR 8.33, and 28 CFR 35.130). An individual with a disability can request a reasonable accommodation to any rules, policies, practices or services at any time. This may arise, for example, when a request to move is due to a disability of a family member. This provision applies even if a family might otherwise be restricted from moving (e.g., under a "one move per year" policy or because of insufficient funding). The reasonable accommodation determination is made on a case-by-case basis.

In cases where the limitation on portability is a discretionary policy of the PHA, the PHA must grant the accommodation unless doing so would impose an undue financial and administrative burden to the PHA. In cases where the limitation on portability is compelled by regulation, the PHA must first assess whether the requested accommodation would impose an undue financial

and administrative burden. If this assessment confirms no undue burden, the PHA must request a waiver of the regulatory provision from HUD.

In cases where a PHA determines it has insufficient funding to allow a move (provided that all of the requirements of section 7 of this notice are met) the PHA must consider a request for a reasonable accommodation, but may, where the individual facts warrant, determine that allowing the move would pose an undue financial and administrative burden to the PHA. Such determination is subject to review by the local HUD office, as well as by the HUD Office of Fair Housing and Equal Opportunity in the event a complaint is filed alleging a failure to grant a reasonable accommodation.

With respect to voucher extensions of time, both receiving and initial PHAs should consider that individuals with disabilities and families that include a member with a disability may require additional time to locate a suitable unit. Such households may also request an extension of time as a reasonable accommodation. Reasonable accommodation requests could also be made in the following areas: requesting that specific receiving PHA policies are provided to the family under the explanation of how portability works, requesting additional details about a receiving PHA when selecting the receiving PHA, and requesting a larger unit size.

b. Limited English Proficiency (LEP) and Effective Communication with Individuals with Disabilities. In communications and making written information available to families (including Appendix B below), PHAs must ensure that such information is available in appropriate languages to ensure access for persons with LEP. See HUD's LEP guidance at http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf. For further information regarding LEP requirements, *see* www.lep.gov.

PHAs must also ensure that communications and materials are provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and their implementing regulations. PHAs must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in

appropriate accessible formats as needed, *e.g.*, Braille, audio, large type, assistive listening devices, and sign language interpreters. See Section 504 requirements regarding effective communication requirements for persons with disabilities in 24 CFR 8.6 and ADA Title II requirements at 28 CFR Part 35, Subpart D. In addition, for more information regarding effective communication requirements under the ADA, which are similar to the requirements under Section 504, see the U.S. Department of Justice's Effective Communication guidance at http://www.ada.gov/effective-comm.htm.

4. Family Briefing. When a family is first selected to participate in the HCV program, regulations require that the PHA give the family an oral briefing and an information packet, which include information on a specific set of subjects listed in regulation. The following paragraphs focus only on changes to the required contents of family briefings resulting from publication of the final portability rule. The full list of required oral briefing subjects can be found at 24 CFR § 982.301(a), and the full list of required briefing packet subjects at 24 CFR § 982.301(b). PHAs must make any necessary revisions to their current materials and to the delivery of the oral briefing to comply with the changes described below.

a. How Portability Works. Regulations require that an explanation of how portability works is provided as part of both the oral briefing and the briefing packet to all families, not just to those families who are eligible to move under portability. Also, PHAs must explain to families who elect to move under portability how differences in the receiving PHA policies may affect the family's assistance through screening criteria, subsidy standards, payment standards and any other elements of the portability process which may affect the family's assistance. For example, the receiving PHA might have more stringent policies related to screening for criminal backgrounds which may impact the family's assistance.

PHAs are generally not required to research and provide families with specific receiving PHA policies. Instead, the requirement is for initial PHAs to make the family aware that the receiving PHA's policies may be different and how that may impact the family's assistance.

See Appendix B for a sample "how portability works" handout. This is meant to serve as a tool that may be used by PHAs in meeting this requirement. PHAs are not required to use Appendix B.

b. Advantages of Moving to Areas with Low Concentrations of Low Income Families. HCV regulations now require that an explanation of the advantages of moving to an area that does not have a high concentration of low income families be provided to all families, not just to families currently living in high-poverty census tracts. This explanation is to be provided as part of the oral briefing and the information packet. PHAs no longer need to identify whether a family lives in a high-poverty census. For purposes of this section, PHAs may follow HUD's definition of Concentrated Areas of Poverty under the AFFH Tables and Mapping Tool (see section 4.e below for the definition).

PHAs may use research that shows positive outcomes on voucher families who move to low-poverty areas, to prepare materials and in delivering information on the advantages of moving to areas with low concentration of low income families. For example, research has shown that moving to areas of low-poverty concentration has strong positive physical and mental health effects. Research has also shown that those families who lived in low-poverty neighborhoods for a longer period had an increased likelihood of finding employment and having higher incomes, and their children also had higher scores in school and were more likely to enroll in college. The following research papers/reports include some of the resources available to PHAs:

(1) "*The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates*" (Raj Chetty and Nathaniel Hendren, 2015) and "*The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*" (Raj Chetty, Nathaniel Hendren, and Lawrence Katz, 2015): these studies show how neighborhoods affect upward mobility of low-income children and find that every year of exposure to a better environment improves a child's chances of success. http://www.equality-of-opportunity.org/index.php/executive-summaries.

(2) *"Benefits of Living in High-Opportunity Neighborhoods" (Urban Institute, 2012)*: this brief analyzes and discusses findings from HUD's Moving to Opportunity (MTO)

demonstration. http://www.urban.org/research/publication/benefits-living-high-opportunity-neighborhoods.

(3) *HUD's MTO demonstration*: tested the long-term benefits of helping poor families move from severely distressed housing projects to low-poverty neighborhoods. http://www.huduser.org/publications/pdf/MTOFHD_fullreport_v2.pdf.

c. Information on Selecting a Unit. Regulations require that any information that HUD makes available on how to select a unit is provided as part of the oral briefing and the briefing packet. Besides the HUD brochure "A Good Place to Live" there is currently no other HUD provided information on this topic. HUD will notify PHAs if such information is made available in the future.

d. Voucher Term. In previous regulation, the PHA was required to explain (as part of the briefing packet) the term of the voucher, and the PHA's policies on extension or suspension of the voucher term. The PHA is still required to include information in the briefing packet about the term of the voucher, extensions, and voucher suspension. However, the information on voucher suspension must no longer be presented as a PHA policy because current regulation mandates voucher suspension. Instead, the briefing packet must be revised to explain how voucher suspension works under current regulation.

e. List of Landlords or Other Resources. Regulations require that a list of landlords known to the PHA who may be willing to lease a unit to the family, or other resources known to the PHA that may assist a family in locating a unit, is provided to families as part of the briefing packet. Generally, this list may include only resources, or only landlords, or both.

PHAs whose jurisdiction includes areas of poverty or minority concentration must ensure that the list covers areas outside of poverty or minority concentration. To meet this requirement, PHAs must do the following:

(1) Conduct outreach to landlords within the PHA's jurisdiction with properties outside areas of minority or poverty concentration, so as to develop relationships with such landlords,

market the advantages of participating in the HCV program (e.g., the PHA guarantees a portion of the rent), and increase their interest in participating in the program.

(2) Include resources that will assist voucher holders in finding units outside areas of minority or poverty concentration, as part of the list. A list of resources is below.

Consistent with their obligations to affirmatively further fair housing, PHAs are expected to ensure that the list also covers areas outside of R/ECAPs, integrated areas, and areas providing access to opportunity. PHAs may conduct the activities described above in taking steps to ensure that the list covers these areas.

Data/Mapping Tools: PHAs have two options for determining whether an area is a poverty or minority concentrated area:

(1) HUD's Data and Mapping Tool provides maps and tables at the jurisdictional (CDBG, HOME, and ESG jurisdictions) and regional level. PHAs can select the CBDG jurisdiction(s) that best approximates the PHA's jurisdiction for the HCV program and produce maps that show where HCV participants are living and how that relates to poverty or minority concentration in the community, R/ECAPs, the location of other assisted housing, segregated and integrated areas, and access to proficient schools, jobs, and transportation. The maps show the census tracts boundaries within a given jurisdiction and highlights those census tracts within a jurisdiction or region that are R/ECAPs. PHAs may overlay neighborhood maps of their jurisdictions to see how the tract boundaries overlap with neighborhoods in the community. HUD's AFFH Data and Mapping Tool and User Guide can be found on HUD's website at the following address: https://www.hudexchange.info/resource/4867/affh-data-and-mapping-tool/.

(2) The Federal Financial Institutions Examination Council's (FFIEC) Geocoding/Mapping System (https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx) provides information for specific addresses on MSA median family income, census tract median family income, tract percentage below the poverty line, tract minority population, tract minority percentage, and related topics.

Definition of R/ECAPs: HUD's AFFH Data and Mapping Tool defines R/ECAPs as[2]:

(1) Tracts with a non-white population of 50% or more (20% or more for non-metro areas), and

(2) Tracts with a poverty rate of more than 40% or at least 3 times the average tract poverty rate for the metropolitan/micropolitan area, whichever is lower.

Resources: Resources that may assist voucher holders in finding units outside areas of minority or poverty concentration include, but are not limited to:

(1) Information on how to use Zillow, Craigslist, and other search tools used by mainstream renters.

(2) Mobility counseling resources, either managed by the PHA or by another organization such as a HUD-assisted housing counseling agency. A list of HUD approved housing counseling agencies, searchable by whether they provide mobility and relocation counseling, can be found at http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?weblistaction=summary.

These same resources may also be used to assist voucher holders in finding units outside R/ECAPs, segregated areas, and areas with disparities in access to opportunity.

Questions about which areas the list must cover to meet fair housing requirements should be addressed to your local HUD fair housing office. You may find HUD's Office of Fair Housing and Equal Opportunity directory at the following address: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/fheodir.

[2] More information can be found at the following address: https://www.huduser.gov/portal/sites/default/files/docs/AFFH_Data_Documentation_12_31_2015.docx.

5. **Suspension of the Term of the Voucher.** During the initial or extended term of the voucher, the family is required to submit a Request for Tenancy Approval (Form HUD-52517). The term of the voucher is suspended starting when the Request for Tenancy Approval is submitted to the PHA until the PHA notifies the family in writing whether the assisted tenancy has been approved or denied. This provision applies to all families who are leasing a unit (not just to families under portability). Suspension applies even if a family that submits a Request for Tenancy Approval decides to cancel such request. In such cases, the suspension ends when the PHA learns of the cancellation. Under portability procedures, the requirement to suspend the term of the voucher applies to the receiving PHA only. See section 14.b below for more information on the impact of suspension on the initial billing deadline.

6. **Denying Family Requests to Move.** This section outlines the process for denying a family's request to move, including when the PHA may deny a family's request to move, when the PHA must deny the family's request to move, and Violence Against Women Act (VAWA) requirements. See section 7 below for additional details on denying families' request to move due to insufficient funding.

a. **Mandatory Denial of a Family Request to Move.** PHAs must deny the move for applicants who are not income eligible in the receiving PHA's jurisdiction. Moves must also be denied for families that have moved out of their assisted unit in violation of the lease. See Section 6.c below for exceptions under VAWA.

b. **Discretionary Denial of a Family Request to Move.** PHAs may deny a family's request to move under the following program regulations:

(1) The family's action or failure to act as described in 24 CFR § 982.552 or 982.553.
(2) The request to move does not comply with the PHA's policies on the timing and frequency of moves in accordance with 24 CFR § 982.354(c)(2). These policies include prohibiting any move by the family within the initial lease term and prohibiting more than one move by the family during any one-year period. A PHA must not establish a

policy that restricts families from moving only at the time of their annual reexamination. These policies must be consistent with applicable civil rights laws and regulations. See section 3 above.

(3) The PHA has insufficient funding for continued assistance in accordance with 24 CFR § 982.354(e)(1). See section 7 below for more information.

(4) The family is a non-resident applicant and is requesting to port. Nonresident applicants have no right to move under portability for 12 months from the time the family is admitted to the HCV program. See 24 CFR § 982.353(c) for the definition of non-resident applicant and other provisions. Initial PHAs may allow the move before the end of this 12 month period.

c. Violence Against Women Act (VAWA). As previously noted in HUD Notice PIH 2007-5, the Violence Against Women and Justice Department Reauthorization Act 2005 (VAWA 2005) amended section 8(r) of the U.S. Housing Act to provide an exception to the prohibition against a family moving in violation of the lease. VAWA 2005 provides that the family may receive a voucher and move in violation of the lease if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is, or has been, the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit. The final rule, HUD Programs, VAWA Conforming Amendments, was published in the *Federal Register* on October 27, 2010. The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) expanded protections to victims of sexual assault. More information on these expanded protections can be found in the "VAWA 2013: Overview of Applicability to HUD Programs" Federal Register Notice, 78 FR 47717, August 6, 2013.

If the circumstances described above exist, the PHA may allow a family to move if the only basis for the denial is that the family is violating the lease agreement. The PHA may request that the family (victim) document or provide written evidence to demonstrate that the violence occurred.

The family has the option of either submitting the HUD-approved certification form (Form HUD-50066[3]) OR third-party documentation, such as:

(1) A record of a Federal, State, tribal, territorial, or local law enforcement agency (e.g. police), court, or administrative agency; or
(2) Documentation signed by the victim and signed by an employee, agent or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) that he or she believes that the incident of domestic violence, dating violence, sexual assault, or stalking is grounds for protection under 24 CFR part 5, subpart L.

7. Denying Family Requests to Move - Insufficient Funding. This section outlines when PHAs may deny moves due to insufficient funding, and describes the steps PHAs must take to deny moves for this reason, including notifying the local PIH field office, establishing policies that address denial of family moves due to insufficient funding, and consequences for improper denial of requests to move due to insufficient funding. This section also provides guidance for how PHAs determine and document the determination of insufficient funding.

If a PHA approves a family's request to move and then subsequently experiences a funding shortfall, the PHA may only rescind the voucher if the family would be allowed to remain in its current unit. If the family cannot remain in the unit (e.g. family has already vacated the unit or family has already notified the owner of their intent to vacate and the owner has re-let the unit to another family) the PHA must not rescind the voucher. The family must be allowed to lease a new unit. This requirement applies to moves within the PHA's jurisdiction and to portability moves.

[3] Note that Form HUD-50066 is subject to change as a result of publication of the VAWA 2013 Final Rule.

An initial PHA may not terminate a portability voucher under a billing arrangement with a receiving PHA for insufficient funding because the initial PHA is not a party to the HAP contract. Initial PHAs may not impose a cap on the amount of HAP they will pay for a family that has moved under portability.

a. When a PHA May Deny a Move Due to Insufficient Funding. A PHA may only deny a request to move due to insufficient funding if all of the following applies:

(1) The move is to a higher cost unit (for moves within the PHA's jurisdiction) or to a higher cost area (for portability moves). See definitions below.
(2) The receiving PHA is **not** absorbing the voucher (applicable only to portability moves).
(3) The PHA would be unable to avoid termination of current participants during the calendar year in order to remain within its budgetary allocation (including any available HAP reserves) for housing assistance payments.

Higher cost unit: is defined as a unit which requires a higher subsidy amount due to an increase in the gross rent for the new unit. A PHA **may not** deny requests to move due to insufficient funding if the subsidy for the new unit is equal to or less than the current subsidy being paid for the family.

Higher cost area: is defined as an area where the PHA would have to pay a higher subsidy amount due to higher payment standards or more generous subsidy standards of the receiving PHA (e.g. the receiving PHA issues a 3-bedroom voucher to a family that received a 2-bedroom voucher from the initial PHA). A PHA **may not** deny requests to move due to insufficient funding if the area the family has selected is not a higher cost area.

A PHA may not deny a family request to move under portability if the receiving PHA has confirmed that they will absorb the family into their program. In such cases, the initial PHA has no grounds to deny the portability move under 24 CFR § 982.354(e)(1).

The PHA **must not** deny the move for families moving within the PHA's jurisdiction (even if the new unit is a higher cost unit) if the family must move from their current unit (e.g. the unit failed

HQS, the owner failed to renew the lease, etc.). If the family is moving under portability, the PHA may deny the move under these circumstances if the family is moving to a higher cost area under portability and the receiving PHA is not absorbing the family into their program.

A PHA may not deny a family's request to move due to insufficient funding because it wishes to admit additional families from its waiting list into its voucher program, regardless of whether it has unit months available to do so. If the PHA denies a family's request to move, it may not subsequently admit families from its waiting list to its HCV program until families with open requests to move (based on PHA policy) are processed. See section 7.d below for more information on PHA policies addressing denial of family moves for insufficient funding.

b. Notifying the Local PIH Field Office. The PHA is required by regulation to provide written notification to the local PIH field office within 10 business days of the date on which the PHA determines it is necessary to deny family moves due to insufficient funding. Only one notification per calendar year is required and it must include the following:

(1) A financial analysis that demonstrates insufficient funds are projected to meet the current calendar year projection of expenses. See section 7.c below for more information.
(2) A statement certifying the PHA has ceased issuing vouchers and will not admit families from their waiting list while the limitation on moves is in place.
(3) A copy of the PHA's policy stating how the PHA will address families who have been denied moves. The requirements of the policy are described in section 7.d below.

PHAs do not need prior HUD approval to deny a family move for insufficient funding, subject to section 7.e below.

c. Determining Whether There Is Sufficient Funding. In projecting whether there is sufficient funding available for the remainder of the calendar year, PHAs may make reasonable estimates to factor in conditions such as pending rent increases that would affect the subsidy and the attrition rate for families leaving the program. PHAs **may not** include projected costs for vouchers issued to families from the waiting list but not yet leased as part of this analysis. Vouchers issued to those on the waiting list cannot be considered an expense for purposes of

determining whether to deny a move due to insufficient funding until such time that HAP contracts are executed and the PHA is legally obligated to make HAP payments. The initial PHA may consider any reported changes in the family's income or composition that may result in a decreased subsidy amount.

A two-year forecasting tool is available on HUD's website at the following address: http://www.hud.gov/offices/pih/programs/hcv. This tool is designed to assist PHAs in determining if sufficient funding is available to support a move and is helpful in demonstrating the PHA's determination that sufficient funding is not available. PHAs are not required to use this tool and may choose to use other tools of their own.

d. PHA Policies Addressing Denial of Family Moves For Insufficient Funding. The PHA must establish policies in its Administrative Plan that state how the PHA will address families whose request to move are denied due to insufficient funding once the PHA determines funds are available for those moves. At a minimum, the PHA policy must address:

(1) How the PHA will inform families of the PHA's local policy regarding moves denied due to insufficient funding (e.g. information contained in briefing packets or in a letter to the tenant at the time the move is denied).
(2) How long the family's request to move will be open for consideration.
(3) How the PHA will notify families with open requests when funds become available (which should be no later than January 1st of the following calendar year).

e. Improper Denial of Requests to Move. If HUD determines that the PHA lacks grounds to deny moves due to insufficient funding, the PHA must immediately inform any affected family and immediately process the family's request to move, regardless of PHA policies as described in section 7.d above. HUD may impose sanctions on PHAs that improperly deny a family's request to move due to insufficient funding. Such sanctions may include a reduction of the PHA's administrative fee of up to 10 percent for the two quarters following the quarter that HUD identified the improper denial. The reduction would be applied to the PHA's prorated administrative fee (assuming that a pro-ration factor applies to the PHA administrative fees

during this period). HUD will consider the circumstances of the particular case in making this determination. Should HUD determine to apply such sanction, the PIH field office with jurisdiction over the PHA will inform the PHA by letter and will send a copy to HUD's HCV FMC and HCV FMD to implement the administrative fee reduction. The general policy described in the preceding paragraph in no way restricts HUD from exercising additional remedial actions or imposing sanctions for PHAs that have improperly denied families' request to move due to insufficient funding.

8. Portability – Use of Email or Other Delivery Confirmation Method. Regulations require the use of email or other delivery confirmation methods for communications between the initial and receiving PHA. HUD supports email as the preferred method of communication. This requirement applies to all communications between receiving and initial PHAs referenced in this notice. PHAs are encouraged to establish a generic portability email, and controls for the management of such mailbox, to avoid misplacement of portability emails due to staffing changes at the PHA.

An initial PHA must have a signed and valid HUD-9886 "Authorization for the Release of Information Privacy Act" on file before transmission of income verification information obtained through the Enterprise Income Verification (EIV) system. See PIH Notice 2012-4 "Effective Use of the EIV System" for more information. Also see PIH Notice 2015-6 "Privacy Protection Guidance for Third Parties" for information on requirements for transmittal of Personally Identifiable Information (PII) via email.

9. Portability - Initial PHA Processing Responsibilities. This section outlines the responsibilities of initial PHAs in processing a portability move. More information about the billing process, including initial and receiving PHA's responsibilities, is found in sections 11-14 of this notice.

a. Determining HCV Program Eligibility of Applicant Families that are Requesting to Port. The initial PHA determines if the family is eligible for participation in the HCV program,

including whether the family is income eligible in the area to which the family wishes to move. The initial PHA determines HCV program eligibility **only** if the family is an applicant family (the family is not currently an HCV program participant).[4] If the family meets all HCV eligibility criteria but is not income eligible in the area to which the family wishes to move, the PHA must inform the applicant family they may not move to that area with continued HCV assistance. But the family may lease a unit in the initial PHA's jurisdiction if the family is HCV eligible (including income eligible) in the initial PHA's jurisdiction.

The receiving PHA's income limits are used in determining income eligibility. Initial PHA policies applicable to determination of family eligibility are used for all other eligibility criteria. See 24 CFR § 982.201 for more information on eligibility criteria for the HCV program.

b. Determining Eligibility to Move. Once a family informs the initial PHA of their desire to move under portability and where they want to move to, the initial PHA determines the family's eligibility to move. A family's eligibility to move is determined in accordance with 24 CFR § 982.353 and 24 CFR § 982.354. See sections 15 and 16 below for more information on denying family moves.

c. Selecting the Receiving PHA. If more than one PHA administers a voucher program in the area to which the family is moving, the family selects the receiving PHA. The initial PHA must provide the family with the contact information for all of the receiving PHAs that serve the area. The initial PHA may, but is not required to, provide more details about the receiving PHAs (such as whether the receiving PHA administers an FSS or a homeownership program).

[4] The family becomes an HCV participant on the effective date of the first HAP contract executed by the PHA for the family. 24 CFR 982.4.

If the family requests it, the initial PHA must select the receiving PHA. If the initial PHA is selecting the receiving PHA per the family's request, the initial PHA is not required to provide the contact information for all receiving PHAs in the area.

Initial PHAs may determine whether there is more than one receiving PHA in the area to which the family wishes to move by searching in the PHA contact list on HUD's website at the following address: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha/contacts.

If the initial PHA is unable to ascertain whether there is more than one receiving PHA from this list, the initial PHA may contact a receiving PHA or the local PIH field office in the area to which the family wishes to move to gather more information.

d. Contacting the Receiving PHA. Once the receiving PHA is selected, regulations require that the initial PHA contact the receiving PHA to determine whether the receiving PHA will bill or absorb the family's voucher. It is the responsibility of the initial PHA, not the family, to contact the receiving PHA to determine whether the receiving PHA will bill or absorb. This information may be critical in determining whether the initial PHA approves or denies the portability request. See sections 15 and 16 below for more information on denying family moves.

e. Voucher Issuance. Once the portability request is approved, the initial PHA issues the family a voucher, if it has not already done so.

f. Advising the Family How to Contact the Receiving PHA. Once the receiving PHA has been selected and the portability request approved, the initial PHA also advises the family how to contact and request assistance from the receiving PHA. The initial PHA may do so by providing the family with the name, telephone number, and email of the receiving PHA's staff responsible for working with incoming portability families and any procedures related to appointments for voucher issuance the receiving PHA has shared with the initial PHA. Simply referring the family to HUD or to a website for information on the receiving PHA does not fulfill the responsibilities

of the initial PHA under the program regulations. Initial PHAs may fulfill this requirement by providing this information to families during the process of selecting the receiving PHA as described in Section 9.c above.

g. Notifying the Receiving PHA. Per regulation, the initial PHA promptly notifies the receiving PHA to expect the family by contacting the receiving PHA on the family's behalf. Initial PHAs may fulfill this requirement during their initial contact with the receiving PHA to determine whether the voucher will be billed or absorbed, or as part of a separate communication with the receiving PHA.

h. Providing the Portability Information. The initial PHA must send the receiving PHA the documents listed below. Initial PHAs are encouraged to provide this information when contacting the receiving PHA to notify them that the family is approved to port to the receiving PHA jurisdiction. See Section 8 above for more information on requirements for transmittal of PII.

(1) Form HUD-52665. The initial PHA completes and sends Part I of this form to the receiving PHA.

(2) The most recent HUD Form-50058 (Family Report) for the family. Note that in the case of an applicant family, the initial PHA has not yet completed the HUD-50058 in its entirety because the family is not yet a new admission. See section 18 below for more information on PIC data entry and page 70 of the Form HUD-50058 Instructions Booklet for sections to be completed at the time of voucher issuance. The initial PHA must provide the partially completed HUD-50058 for the applicant family to the receiving PHA. And, income information in a format similar to the Form HUD-50058 so that the information is easily available for use by the receiving PHA.

(3) All related verification information.

(4) A copy of the voucher signed by the participant and the PHA.

i. Special Purpose Vouchers. The initial PHA must submit any special purpose voucher codes (i.e., HUD-VASH, NED, FUPF/FUPY, NHT) on line 2n of the Form 50058. Initial PHAs

are required to administer special purpose vouchers in accordance with any HUD-established alternative program requirement, including any portability alternative requirement.

Currently, only the HUD-VASH program has alternative portability requirements, which may be found in Section G of the Federal Register (FR) Notice "*Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program."* This FR notice can be found at the following address: http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-7081.pdf. While no other special purpose voucher program has alternative portability requirements, portability information for the Family Unification Program (FUP) program can be found in the FUP FAQs at the following address: http://portal.hud.gov/hudportal/documents/huddoc?id=fupfaqs_dec2012.pdf. And, there are specific portability provisions that apply to the Family Self-Sufficiency (FSS) program and the HCV Homeownership program, which can be found in regulations at 24 CFR 984.306 and 24 CFR 982.636, respectively. Additional guidance on FSS portability provisions is found in PIH Notice 2016-08.

10. Portability - Receiving PHA Processing Responsibilities. This section outlines the responsibilities of receiving PHAs in processing a portability move. More information about the billing process, including initial and receiving PHA's responsibilities, is found in sections 11-14 of this notice. Also, see section 11 for more information about the receiving PHA's responsibilities after a portability family has leased a unit in its jurisdiction.

a. Requirement to Administer Assistance. The receiving PHA cannot refuse to assist an incoming family or direct them to a neighboring PHA for assistance. This includes having a policy of denying an incoming portability family if there is not a set number of days left on the initial PHA's voucher. Receiving PHAs may not have such a policy.

Under certain circumstances, HUD may exempt a receiving PHA from the requirement to assist an incoming portability family. The receiving PHA can only refuse to assist a portability family after receiving written approval from HUD. The receiving PHA initiates requests to deny

administration of portability vouchers by sending a written request to the Director of the local PIH field office. The request must, at a minimum, address the circumstances that prevent the receiving PHA from processing incoming portability families, including any documentation supporting the request. The local HUD office, at its discretion, may request additional information deemed necessary to process the request. The local PIH field office Director will render a decision in writing to the PHA within 30 days from receipt of the PHA's request. Such requests are meant only for extreme circumstances, such as when the receiving PHA is in a presidentially declared-disaster area. Also, see the exception discussed in section 10.b below.

b. Denial or Termination of Assistance. Receiving PHAs may rescreen families who have moved into their jurisdiction under portability by applying their own policies for denial or termination of assistance under HCV regulations at 24 CFR § 982.552 or 24 CFR § 982.553. For example, the receiving PHA may have a policy to terminate or deny HCV assistance if any member of the family has been evicted from federally-assisted housing in the last 5 years. The receiving PHA may refuse to assist a portability family by referring the family back to the initial PHA, or terminate the family's HCV participation, on any of the grounds in 24 CFR § 982.552 or 24 CFR § 982.553. The receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit until the rescreening processes are completed. However, receiving PHAs may take subsequent action against the family (as explained in the preceding sentence) based on the results of the rescreening.

Receiving PHAs do not need prior HUD approval to refuse portability assistance in these cases because they are authorized under regulation to deny the move in accordance with their screening policies. This is because the regulatory meaning of both denial of assistance (applicants) and termination of assistance (participants) specifically includes refusing to process or provide assistance under the portability procedures. If the receiving PHA refuses the portability move, the initial PHA is not precluded from assisting the family either in the initial PHA jurisdiction or by allowing the family to port to another receiving PHA's jurisdiction in accordance with the portability procedures.

PHAs must ensure that any admissions or occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR § 5.105. In using admissions or occupancy requirements that relate to the use of criminal background, PHAs must also ensure that such requirements are consistent with Notice PIH 2015-19 (Nov. 2, 2015), *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*, at http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf.

If the receiving PHA takes action against the family as described in the preceding paragraphs, the receiving PHA is required to provide the ported family with the opportunity to request an informal hearing (if the family is a participant) or an informal review (if the family is an applicant) in accordance with 24 CFR § 982.554 or 982.555. The participant/applicant status of the family is identified by the initial PHA under the Certification Statement under Part I of form HUD 52665.

c. Responding to the Initial PHA. Once the initial PHA contacts the receiving PHA to inquire whether the receiving PHA will bill or absorb, the receiving PHA must respond by email or other confirmed delivery method to the initial PHA's inquiry. **If the receiving PHA notifies the initial PHA that they will absorb the voucher, the receiving PHA cannot reverse its decision at a later date without the initial PHA's consent.** This prevents placing a financial hardship on the initial PHA and putting a family that has already terminated the lease, vacated their assisted unit, and moved to the new jurisdiction at risk of losing their assistance.

d. Expired Initial PHA Voucher. If the initial PHA's voucher has already expired when the family arrives at the receiving PHA, regulations require the receiving PHA to contact the initial PHA to determine whether it will extend the voucher term. If the initial PHA extends the voucher, the receiving PHA processes the ported family and the receiving PHA's voucher expiration date will be based on the initial PHA's extended deadline (see section 10.f below for an example of this policy). An informal hearing is not required when a voucher has expired without the family leasing

a unit. This is because regulations at 24 CFR 982.555(b) do not require an informal hearing for a PHA determination not to approve an extension of a voucher term. In determining whether to grant an extension of the voucher term, PHAs must follow their own policies as addressed in their HCV administrative plan.

e. Determining the Unit Size. The receiving PHA is required by regulation to determine the family unit size for the family, and base its determination on its own subsidy standards.

f. Voucher Issuance. After receiving the form HUD-52665 and supporting documentation from the initial PHA, the receiving PHA must promptly issue a voucher to the family for its search in the receiving PHA's jurisdiction. HUD expects the receiving PHA to process the family's paperwork and issue the family a voucher within two weeks of receiving the HUD-52665 and supporting documentation provided the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures.

The term of the receiving PHA's voucher may not expire before 30 calendar days from the expiration date of the initial PHA's voucher. For example, if the initial PHA's voucher expires 10/30/2016, the receiving PHA's voucher may not expire before 11/29/2016.

If the initial PHA extends the term of the voucher as explained in section 10.d above, the receiving PHA's voucher may not expire before 30 days from the new expiration date of the initial PHA's voucher. For example, if in the example in the preceding paragraph the initial PHA extends the voucher until 11/30/2016 the receiving PHA voucher may not expire before 12/30/2016. Receiving PHAs may extend the voucher beyond this additional 30 days (see section 10.g below on voucher extensions).

The receiving PHA may delay issuance of the voucher or approval of the unit if the family refuses to comply with the receiving PHA's procedures. In any case where the receiving PHA is refusing to process or provide assistance under the portability procedures, the family must be

given the opportunity for an informal review or hearing in accordance with 24 CFR § 982.554 or 982.555.

g. Voucher Extensions. The receiving PHA may subsequently extend its own voucher's term. Any extensions of search time provided by the receiving PHA are only valid for the family's search in the receiving PHA's jurisdiction. **The receiving PHA is required by regulation to inform the initial PHA of any extensions of the voucher term.**

When extending the voucher, receiving PHAs should consider the billing deadline (see section 14.b below for billing deadline information). The receiving PHA must ensure that any voucher expiration date leaves sufficient time to process a Request for Tenancy Approval, execute the HAP contract, and cover the anticipated delivery time (if the PHA is not submitting the billing information by fax or email) of the initial billing. If the initial billing is not received by the initial PHA by the deadline date, the receiving PHA will have to absorb the voucher unless the initial PHA accepts the late billing.

h. Reexaminations. Receiving PHAs may choose to conduct a new income reexamination for a participant family. In such cases, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit until those processes are completed. However, the PHA may take subsequent action against the family based on the results (e.g., recalculating the HAP payment based on updated income information).

In the case of an applicant family, the receiving PHA may delay issuing a voucher or otherwise delay approval of a unit only if it is necessary to re-determine income eligibility. For example, if the applicant family initially reported they had no earned income but they subsequently obtain new employment, the receiving PHA shall re-determine income eligibility for the applicant family to ensure the family is income eligible in the receiving PHA's jurisdiction. As a reminder, the receiving PHA does not re-determine income eligibility for a portable family that was already receiving voucher assistance.

i. Family Decides Not to Lease in the Receiving PHA's Jurisdiction. If an incoming family ultimately decides not to lease in the jurisdiction of the receiving PHA, the receiving PHA must refer the family back to the initial PHA. The voucher of record for the family is once again the voucher originally issued by the initial PHA, and the initial PHA's policies apply. Any extensions of the initial PHA's voucher to allow the family additional search time to return to the initial PHA's jurisdiction or to move to another jurisdiction are at the discretion of the initial PHA. The initial PHA must apply its own policies on moves for families that decide not to use their voucher to port to another jurisdiction

j. Notifying the Initial PHA. Regulations require the receiving PHA to promptly notify the initial PHA if the family has leased an eligible unit under the program, or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the voucher.

k. Absorption of the Ported Voucher. The receiving PHA may absorb the family into its own program provided it has funding available under its ACC to do so and such a decision will not result in over-leasing for the Calendar Year.

Although a receiving PHA notifies the initial PHA of its intent to absorb an incoming family early in the portability process, a PHA does not technically "absorb" a family into its program until the receiving PHA executes a HAP contract on behalf of the family in the receiving PHA's jurisdiction. False processing of portability paperwork (sham portability moves) to address a PHA's utilization or leasing problems is prohibited. If the family does not move to a different unit and is not placed under a HAP contract in the receiving PHA's jurisdiction, the receiving PHA cannot absorb the family.

The receiving PHA may also absorb a family for which it was billing by terminating the billing arrangement with the initial PHA. In such cases, the receiving PHA must send form HUD-52665 to the initial PHA. The receiving PHA selects option 8 under Part II-B of such form. See section 16 below for more information.

11. Portability - Receiving PHA Ongoing Responsibilities. This section outlines the ongoing responsibilities of receiving PHAs once a ported family leases a unit in the receiving PHA's jurisdiction.

a. Special Purpose Vouchers. The receiving PHA must maintain any special purpose voucher codes (i.e., VASH, NED, FUPF/FUPY, NHT) on line 2n of the Form 50058 as long as it is billing for the family. Receiving PHAs are required to administer special purpose vouchers in accordance with any HUD-established alternative program requirement, including any portability alternative requirement.

Currently, only the HUD-VASH program has alternative portability requirements, which may be found in Section G of the Federal Register (FR) Notice "*Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-VA Supportive Housing Program."* This FR notice can be found at the following address: http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-7081.pdf. While no other special purpose voucher program has alternative portability requirements, portability information for the Family Unification Program (FUP) program can be found in the FUP FAQs at the following address: http://portal.hud.gov/hudportal/documents/huddoc?id=fupfaqs_dec2012.pdf. And, there are specific portability provisions that apply to the Family Self-Sufficiency (FSS) program and the HCV Homeownership program, which can be found in regulations at 24 CFR 984.306 and 24 CFR 982.636, respectively. Additional guidance on FSS portability provisions is found in PIH Notice 2016-08.

b. Updated Form HUD-50058. The receiving PHA must send the initial PHA a copy of the updated Form HUD-50058 at each reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family. Receiving PHAs send the updated HUD-50058 regardless of whether there is a change in the billing amount. A copy of Form HUD-50058 must also accompany the submission of a portability form (HUD-52665) reporting any changes in the billing amount. See Section 14.e for more information.

The updated form HUD-50058 must be sent to the initial PHA no later than 10 business days following the effective date of the reexamination. Receiving PHA's are strongly encouraged to send the updated form as soon as the family's reexamination is complete. This notification serves as a "reconciliation" to assist both PHAs in fulfilling their accounting and record-keeping responsibilities. The frequency of this notification will be based on how frequently the receiving PHA conducts reexaminations for voucher families, including those that have ported into their jurisdiction.

c. Failure to Send the Updated Form HUD-50058. If the receiving PHA fails to send the updated form 50058 on time, the initial PHA must continue paying the receiving PHA based on the last Form HUD-50058 received, unless instructed otherwise by HUD. Initial PHAs should make a first attempt at resolving any late submissions of the updated form 50058 with the receiving PHA. Should such attempts fail to result in a resolution, initial PHAs may seek assistance from their local PIH field office. If assistance from the local PIH field office also fails to result in a resolution, the initial PHA may seek absorption of the vouchers in question by following the steps below. PHAs are reminded to document all communications between agencies and to retain a record of all transactions between PHAs.

(1) The initial PHA may request absorption of the vouchers in question by memorandum to their local PIH field office Director. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached to the memorandum. A copy of the memorandum must be sent to the receiving PHA.
(2) The local PIH field office will notify the local PIH field office with jurisdiction over the receiving PHA within 15 business days of receiving the initial PHA's memorandum.
(3) The local PIH field office with jurisdiction over the receiving PHA will provide the receiving PHA with 15 business days to respond and provide any supporting documentation if the receiving PHA is contesting the initial PHA's request.
(4) The initial PHA's local PIH field office will send a letter to the initial and receiving PHA within 15 business days from the date the receiving PHA's response was due indicating whether the initial PHA's request was approved. A copy of the letter must be sent to the

receiving PHA's local PIH field office. Both PIH field offices will work together in making a final determination. If the two PIH field offices cannot agree on a decision, they should contact their respective regional director(s) for resolution.

(5) If the vouchers are to be absorbed by the receiving PHA, the billing arrangement on behalf of the family or families in question ceases at the end of the month on the date of the local PIH field office letter. For example, if the local PIH field office letter is dated June 15, the billing arrangement ends June 30. **The initial PHA continues to be responsible for any outstanding payments due to the receiving PHA.**

HUD may in certain instances require the initial PHA to honor a late submission of the reexamination documents (such as where the receiving PHA does not have the funds to support the voucher and the family would be terminated if the initial PHA refused to accept the late billing). In such a case HUD may take action to address the receiving PHA's failure to submit the notification in a timely manner, which may include reducing the receiving PHA's administrative fee.

d. Family Decides to Port to Another Jurisdiction. The receiving PHA does not issue a voucher to a family under a billing arrangement that decides to move under portability to another jurisdiction. Instead, the receiving PHA notifies the initial PHA of the family's request. The initial PHA is responsible for issuing the family a voucher and following the procedures outlined in section 9 above. Good communication between all three PHAs is crucial in these cases.

12. Portability – Administrative Fees. With the release of the HCV administrative fee study, the formula for determining administrative fee amounts owed under portability may change. Until such time as a change in the administrative fee formula is implemented through rulemaking, the requirements of this notice continue to apply.

The administrative fee structure changed with the release of the final portability rule. Revised regulations at 24 CFR § 982.355(e)(3) now provide that the initial PHA reimburses the receiving PHA for the lesser of 80% of the initial PHA's ongoing administrative fee or 100% of the receiving PHA's ongoing administrative fee for each program unit under HAP contract on the

first day of the month for which the receiving PHA is billing the initial PHA. The example below illustrates how administrative fees are now calculated. **Initial and receiving PHAs continue to have discretion to negotiate and agree to a different administrative fee amount.**

The initial PHA's column B administrative fee rate (as indicated in previous guidance) and the receiving PHA's column B administrative fee rate are used in determining the administrative fee amount owed for a ported voucher. HUD publishes the administrative fee rates every year. The posted administrative fees are found at www.hud.gov/offices/pih/programs/hcv.

Proration due to insufficient administrative fee funding will apply to the administrative fee amount for which the receiving PHA may bill the initial PHA. That is, when determining the administrative fee amount, proration will be applied to both the initial and receiving PHA's administrative fee rate. Information on administrative fee proration for portability billing purposes will be provided in the administrative fee rate guidance published by HUD every year in the following webpage: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv.

The administrative fee amounts may be used for the entire calendar year to avoid the need for PHAs to re-calculate their portable fees each quarter, unless otherwise instructed by HUD.

Example: administrative fee proration for the year is 79%. The initial PHA's column B administrative fee rate is $60.59 per voucher. The receiving PHA's column B administrative fee rate is $42.05 per voucher. The receiving PHA bills the initial PHA for $33.21 [the lesser of: (1) $38.29 ($60.59x.79x.80) or (2) $33.21 ($42.05x.79)]. See the table below for a visual representation of this example.

PHA A (initial PHA)	**Column B Rate x Proration x 0.8** *admin fee proration in this example is 79%
	$ 60.59 x 0.79 x 0.8 = $38.29

PHA B (receiving PHA)	**Column B Rate x Proration x 1** *admin fee proration in this example is 79%
	$ 42.05 x 0.79 x 1 = $33.21
Billed Administrative Fee = $33.21 ****under previous rule requirements the billed administrative fee would have been $38.29***	

On September 16, 2015, HUD sent a letter to PHAs providing initial guidance in response to several issues raised after publication of the final portability rule. A follow-up email was sent on October 15, 2015. All of the provisions of the letter and email have been incorporated into this notice. As it relates to changes in the billed administrative fee amount resulting from publication of the final portability rule, the letter instructed receiving PHAs to send an updated form HUD-52665 to the initial PHA no later than October 30, 2015. The follow-up email clarified that the effective date of the change would be no earlier than October 1, 2015. If the initial PHA wished to start sending the new lesser amount at a date after October 1, 2015, it could do so. Changes to the administrative fee amount as a result of publication of the final portability rule apply to all vouchers under a billing arrangement. HUD may take action in cases where the receiving PHA failed to send the Form HUD-52665 by October 30, 2015, including but not limited to, instructing initial PHAs to offset future monthly payments until the overpayment is reconciled.

13. <u>Portability - Summary of Portability Billing Deadlines:</u> The following table summarizes portability billing deadlines by submission type and cross-references the relevant sections of this notice.

Table: Portability Billing Deadlines

Submission Type:	Deadline:	Section of this Notice:
Initial Billing	90 days from the expiration date of the initial PHA's voucher. *30 additional days if delayed billing is due to suspension of the voucher's term.	section 14.b
Initial Payment	30 days from receipt of initial billing.	section 15.a
Subsequent Payments	5th business day of the month.	section 15.a
Change in the Billing Amount	10 business days from effective date of the change.	section 14.e

Submission Type:	Deadline:	Section of this Notice:
Termination of Billing Arrangement	10 business days from effective date of termination.	section 16

14. Portability – Billing the Initial PHA. Regulations at 24 CFR § 982.355(e) provide that the receiving PHA may bill the initial PHA for housing assistance payments (HAP) and administrative fees to fund the assistance for a portable family. This section outlines the process of billing the initial PHA, including completing form HUD-52665, deadlines for initial billings submitted by receiving PHAs, late initial billings, and changes to the billing amount.

In many cases billing difficulties result from miscommunication between agencies. HUD encourages PHAs to work cooperatively to resolve billing difficulties, so that any potential hardship on participants or unnecessary administrative burden is avoided.

a. Form HUD-52665. The initial PHA must enter the date by which the initial billing must be received by the initial PHA on Part I, line 9 of the form. The receiving PHA must complete and send Part II of Form HUD-52665 with sufficient time so that it is received by the initial PHA on or before the initial billing deadline. See section 14.b below for information on the initial billing deadline.

If the receiving PHA will bill the initial PHA, the receiving PHA must: (1) complete and send Part II of the Form HUD-52665 and (2) attach a copy of the new Form HUD-50058. See section 8 above for more information on communications between PHAs, including requirements for transmittal of Personally Identifiable Information via email. Note that Part II-B of form HUD-52665 has several options and more than one of those options may be applicable to each receiving PHA submission of the form. As it relates to the initial portability billing submission, both options 3 and 10 under Part II-B must be completed.

b. Initial Billing Deadline. The initial billing submission must be received by the initial PHA no later than 90 days following the expiration date of the initial PHA's voucher. For

example, if the initial PHA's voucher expires 10/30/2016, the initial billing deadline is 01/28/2017.

In cases where suspension of the term of the voucher will delay the initial billing submission, the receiving PHA must notify the initial PHA of the delayed billing before the billing deadline and document that the delay is due to the suspension of the voucher term. If the receiving PHA meets these requirements, the initial PHA must extend the billing deadline by 30 days. If the initial PHA has not received the portability form within the new 30-day deadline, the initial billing is late.

c. Late Initial Billings. The initial PHA is generally not required to honor initial billings that are not received by the initial billing deadline. If the initial PHA has not received a billing notice by the deadline and determines that it will not accept a late billing, the initial PHA must inform the receiving PHA of this decision in writing. If the initial PHA still subsequently receives a late billing notice on behalf of the family, it returns the late Form HUD-52665 to the receiving PHA. **A receiving PHA that failed to send the initial billing by the billing deadline is generally required to absorb the family into its own program unless the initial PHA is willing to accept the late submission.**

HUD may require the initial PHA to accept the late billing in certain cases (such as where the receiving PHA does not have the funds to support the voucher and the family would be terminated if the initial PHA refused to accept the late billing). In such cases, HUD may subsequently transfer units and funding from the receiving PHA to the initial PHA when it is feasible. The initial PHA may contact HUD to report the receiving PHA's failure to submit the bill in accordance with these procedures. HUD may take action to address the receiving PHA's failure to submit the bill on time, including reducing the receiving PHA's administrative fee.

d. Mid-month Moves. If the effective date of the HAP is on a date other than the first of the month, the receiving PHA cannot bill for administrative fees for that month. This is because administrative fees are earned for each program unit under HAP contract on the first day of the month. Receiving PHAs may bill for the pro-rated HAP amount to the new landlord for a partial

month. Receiving PHAs may also bill for the full HAP paid to the previous landlord, if the receiving PHA has a policy of paying full HAP to the previous landlord on the move-out month. This is because ported vouchers are administered in accordance with receiving PHA policies.

Example: The family leases a unit and the HAP is effective on 10/13/16. The receiving PHA cannot bill for administrative fees for the month of October. The receiving PHA starts billing for administrative fees in November and may bill for the pro-rated HAP amount for October.

e. Changes in the Billing Amount. The receiving PHA must send a new Form HUD-52665 to report a change in the billing amount along with form HUD-50058. As it relates to changes in the HAP amount, both options 4 and 10 under Part II-B of form HUD-52665 must be completed.

Receiving PHAs must notify the initial PHA of changes in the billing amount no later than 10 business days following the effective date of the change. HUD strongly encourages receiving PHAs to notify the initial PHA of billing changes at the same time that it notifies the owner and the family in order to provide the initial PHA with advance notice of the change.

If the receiving PHA fails to send the Form HUD-52665 and Form HUD-50058 within 10 business days following the effective date of the HAP change, the initial PHA is not responsible for paying any increase in the monthly billing amount incurred prior to the notification. If the change resulted in a decrease in the monthly billing amount, the initial PHA will offset future monthly payments until the difference is reconciled. The examples below illustrate this policy.

Example of an Increase: The HAP amount increased effective 10/1/2016. The initial PHA did not receive the revised HUD-52665 and HUD-50058 until 12/9/2016. The initial PHA is not responsible for payment of any increase in the billing amount prior to the payment for 01/2017.

Example of a Decrease: The HAP amount decreased by $50 effective 10/1/2016. The initial PHA did not receive the revised HUD-52665 and HUD-50058 until 1/10/2017. The initial PHA paid an additional $200 ($50 for October, November, December and January) and would offset this amount in future payments.

15. Portability – Billing Payments. This section outlines the billing payment process, including deadlines for billing payments made by the initial PHA and transfer of units and funding as a result of late payments. In many cases billing difficulties simply result from miscommunication between agencies. HUD encourages PHAs to work cooperatively to resolve billing difficulties, so that any potential hardship on participants or unnecessary administrative burden is avoided.

a. Initial and Subsequent Billing Payments. The initial PHA must pay the initial billing amount within 30 calendar days of receipt of Form HUD-52665. Subsequently, the initial PHA must pay **no later than the fifth business day of each month** for each month that the billing arrangement is in effect. The payment must be provided in a form and manner that the receiving PHA is able to accept.

Initial PHAs may not terminate or delay making payments under existing billing arrangements as a result of over-leasing or funding shortfalls in the initial PHA's program. PHAs may only terminate HAP contracts to which they are a party to address insufficient funding in accordance with 24 CFR § 982.454.

b. Transfer of Units and Funding as a Result of Late Payments. Program regulations at 24 CFR § 982.355(f)(1) provide that HUD may transfer funds for assistance to portable families to the receiving PHA from funds available under the initial PHA's ACC. Upon request from the receiving PHA, HUD may exercise this authority in cases where the initial PHA fails to comply with the initial and subsequent monthly billing payment due dates described in section 15.a above. Notwithstanding the transfer policies described below, failure to comply with HUD's financial procedures, including the billing and payment deadlines outlined above, may also result in the reduction of administrative fees.

The steps below outline the process for requesting the transfer of baseline units and funding from the initial to the receiving PHA. The PIH field office with jurisdiction over the receiving PHA is the lead HUD office in resolving any dispute over the timeliness of the billing payments. After examining the documentation submitted by the PHAs the lead field office determines if the billing payments were late.

Receiving PHAs should make a first attempt at resolving any late billing payments with the initial PHA. Should such attempts fail to result in a resolution, receiving PHAs may seek assistance from their local PIH field office. If assistance from the local PIH field office also fails to result in a resolution, the receiving PHA may seek transfer of the units and funding in question by following the steps below. PHAs are reminded to document all communications between agencies and to retain a record of all transactions between PHAs.

(1) The receiving PHA may request by memorandum to the Director of the local PIH field office with jurisdiction over the receiving PHA (the lead PIH field office) that HUD transfer the unit or units and funding in question. A copy of all correspondence between the PHAs on the matter must be attached.
(2) The lead PIH field office will notify the initial PHA of the request within 15 business days of receipt of the receiving PHA's request. This notice will include the amount of time the initial PHA has to respond (as described in step 3 below). A copy of this notification will be sent to the PIH field office director in the PIH field office with jurisdiction over the initial PHA.
(3) The initial PHA must respond to the lead PIH field office's notice within 15 business days. If the initial PHA is contesting whether the billing payments were late, it must provide supporting documentation in their response.
(4) The lead PIH field office will render a decision no later than 15 business days following the deadline by which the initial PHA had to respond to the lead PIH field office's memorandum.
(5) If the lead PIH field office determines that the payments in question were late, it will send a memorandum to the Housing Choice Voucher Financial Management Division indicating the number of units to be permanently transferred from the initial PHA to the receiving PHA.

The number will correspond with the number of families for which billing payments were late. A copy of this memorandum will be sent to the PIH field office with jurisdiction over the initial PHA and to both PHAs.

(6) After receipt of the lead PIH field office's memorandum, HUD will reduce the baseline number of units and budget authority from the initial PHA's ACC and increase the baseline number of units and budget authority on the receiving PHA's ACC. HUD will use the revised baseline numbers to readjust the funding.

(7) The billing arrangement on behalf of the family or families in question ceases with the transfer of the unit or units. **The initial PHA continues to be responsible for any outstanding payments due to the receiving PHA.**

16. <u>Portability - Terminating a Billing Arrangement.</u> This section outlines the process of terminating a billing arrangement with the initial PHA. A billing arrangement is terminated when the receiving PHA absorbs the family into its program after having billed the initial PHA or when the HAP contract is terminated for any reason.

a. Notifying the Initial PHA. The receiving PHA **must** send an updated form HUD-52665 to the initial PHA no later than 10 business days following the effective date of the termination of the billing arrangement. As it relates to terminating a billing arrangement, Part II-B options 7, 8, or 9 of form HUD-52665 may be applicable.

b. Retroactive Absorption. Retroactive absorptions are not allowed. However, receiving PHAs have 10 business days from the effective date of the absorption to send an updated form HUD-52665 to the initial PHA. This may result in absorptions that are retroactive but for no more than 10 business days.

There is one exception to the limitation on retroactive absorptions. If an initial PHA requests that the receiving PHA absorb ported vouchers as a way of avoiding terminations of assistance due to a funding shortfall, the receiving PHA may retroactively absorb families for which the receiving PHA was previously billing. In these cases, the receiving PHA reimburses the initial

PHA for payments back to the effective date of the absorption but only for the current calendar year. This cost saving strategy is consistent with PIH Notice 2011-28, Cost-Savings Measures in the Housing Choice Voucher (HCV) Program.

c. Receipt of Payments for Billing Arrangements No Longer in Effect. In all cases where the receiving PHA receives payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including HAP and administrative fees) to the initial PHA.

If billing payments have continued for billing arrangements no longer in effect, HUD may take the following actions:

(1) Direct the receiving PHA not to utilize their administrative fee reserve account in accordance with 24 CFR § 982.155(b)(3).

(2) Reduce the receiving PHA's administrative fees by up to 10 percent of the monthly billing amount (HAP and Administrative Fee) in question for each month the payments continued after the billing arrangement was terminated. The reduction would be applied to the PHA's prorated administrative fee (assuming that a pro-ration factor applies to the PHA administrative fees during this period). HUD will consider the circumstances of the particular case in making this determination. For example, if the receiving PHA was billing the initial PHA $600 a month on behalf of a family and collected four monthly billing payments beyond the billing arrangement termination date (for a total of $2,400), the receiving PHA is responsible for returning $2,400 to the initial PHA. In addition, HUD may reduce the PHA's administrative fee by up to $240 as sanction for failing to terminate the billing arrangement in a timely manner.

Should HUD decide to take any of the actions described above, the PIH field office with jurisdiction over the receiving PHA will send a letter to the receiving PHA informing the receiving PHA of such action. The PIH field office must send a copy of the letter to the HCV Financial Management Center (FMC) and the HCV Financial Management Division (FMD). HUD may also further reduce the administrative fee if the receiving PHA does not promptly

return the overpayment to the initial PHA. This general policy does not in any way restrict the PIH field office Director from exercising additional remedial action.

See Appendix A for guidance on how to record refunded amounts in the financial records by both the initial PHA and the receiving PHA.

17. Portability and Project-based Assistance. In accordance with 24 CFR § 983.2(b)(2), provisions on portability do not apply to the project-based voucher (PBV) program. A family porting into a receiving PHA's jurisdiction may only receive a tenant-based voucher or homeownership assistance. In order for a tenant-based voucher holder to be housed in a PBV unit, the family would have to apply to the receiving PHA's PBV program and give up their tenant-based voucher prior to being housed in the PBV unit.

18. PIC Data Entry. This section summarizes the action codes to use for ported families when completing Form HUD-50058. It is crucial that PHAs enter timely and accurate information on portability families, as this data is used by HUD when determining whether a PHA is eligible for any additional funding that may be available for PHAs that are paying portability costs above their normal average costs. HUD encourages PHAs to review PIC records periodically to ensure they are properly identified.

a. Type of Action – Line 2a. The table below summarizes the action code submission associated with portability moves. Further details about each submission type are also addressed after the table.

Table: Action Code Submission for Portability Moves

Responsible PHA	Event	Type of 50058 Submission
Initial PHA	Applicant family ports	Voucher Issuance (action code 10)

Responsible PHA	Event	Type of 50058 Submission
Initial PHA	Participant family ports	Move-out (action code 5); regardless of billing or absorption
Receiving PHA	Family ports	Voucher Issuance (action code 10); before entering the following codes, as applicable.
Receiving PHA	Applicant family ports	New Admission (action code 1)
Receiving PHA	Participant family ports	Move-in (action code 4); regardless of billing or absorption

New Admission (action code 1): the receiving PHA classifies the family as a new admission if the family exercises portability with its first admission into the voucher program. This family (generally off the waiting list) would have received a voucher for the first time from the initial PHA and exercised portability without ever having leased an assisted unit in the initial PHA's jurisdiction.

Portability Move-in (action code 4): the receiving PHA classifies the family as a portability move-in if the family moves into a receiving PHA's jurisdiction after being previously assisted by an initial PHA regardless of whether the receiving PHA absorbs the family or bills the initial PHA. The portability move-in code is used even if the receiving PHA chooses to conduct a new reexamination of income for a participant family.

Portability Move-out (action code 5): the initial PHA classifies the family as a portability move-out if the family moves out of an initial PHA's jurisdiction, where it had been previously assisted, regardless of whether the receiving PHA bills the initial PHA or absorbs the family. Reporting of changes in the family's income or composition after a portability move-out is the responsibility of the receiving PHA. See paragraph below on how initial PHAs code applicant families.

Issuance of Voucher (action code 10): Receiving PHAs must enter an action code 10 before submission of an action code 1 (New Admission) and an action code 4 (Portability Move-in). Initial PHAs must enter an action code 10 for families that exercise a portability move with their first admission into the voucher program. See page 70 of the Form HUD-50058 Instructions Booklet for sections to be completed at the time of voucher issuance.

b. Effective Date of Action - Line 2b. Enter the effective date as provided below:

New Admission (action code 1): enter the effective date of the HAP contract for the family.

Portability Move-in (action code 4): enter the effective date of the HAP contract for the family.

Portability Move-out (action code 5): enter the date the family moves out of the initial PHA's jurisdiction.

Issuance of Voucher (action code 10): enter the effective date of the voucher. Each PHA enters the effective date of its own voucher.

c. Did family move into your PHA jurisdiction under portability? - Line 12d. If the family moved into a PHA's jurisdiction under portability as a new admission or portability move-in, regardless of whether the family is absorbed into the receiving PHA's jurisdiction or the initial PHA is billed, the PHA must enter "Y" in this field. This field will not change as long as the family continues to be assisted in the receiving PHA's jurisdiction, even if the receiving PHA decides to absorb the family after first billing the initial PHA.

d. PHA Code Billed - Line 12f. Since an initial PHA is not responsible for submitting reports into PIC for families whose assistance is administered by another PHA under portability, the PHA code of the billed PHA must be entered correctly on this line in order for reporting rates to be accurate.

e. Projected Effective Date of Next Reexamination – Line2i. Generally, this will be 12 months from the last reexamination done by the initial PHA (found in line 2b of the 50058 and

Part I, line 7 of form HUD-52665 sent by the initial PHA to the receiving PHA) or 12 months from the effective date of the reexamination completed by the receiving PHA (generally the effective date of the lease and HAP contract.)

19. Moving to Work (MTW) Agencies. Requirements of the portability rule are applicable to MTW agencies, unless there are approved activities in their MTW plan to the contrary. An MTW agency cannot apply its MTW flexibilities to a voucher holder living in another PHA's jurisdiction. After having moved under portability, the family is subject to the receiving PHA's policies.

20. Paperwork Reduction Act. The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0169 and 2577-0083. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

21. Further Information. Questions concerning this notice should be directed to portability@hud.gov.

/ s /

Lourdes Castro Ramírez,
Principal Deputy Assistant Secretary
for Public and Indian Housing

APPENDIX A

Guidance on PHA Entries for Returning Unearned HAPs and Fees under Portability

A number of cases have surfaced in which the receiving PHA did not promptly inform the initial PHA that billing arrangements were terminated as the result of absorption by the receiving PHA or families leaving the program. As a result the initial PHA continued to make monthly payments for housing assistance payments and administrative fees to the receiving PHA. The receiving PHA is required to refund the excess payments to the initial PHA. See section 16.c above.

The following guidance is provided regarding how to appropriately record in your accounting records accounting entries to accommodate the returned payments.

RECEIVING PHA. Normally, the receiving PHA would have recorded the following when the HAP was paid to the owner on behalf of the family:

DR Accounts Receivable - Initial PHA (for HAP and fee)

CR Income (for Fee)

CR Cash (for HAP payment)

Upon receipt of payment of HAP and fees from the initial PHA, the Receiving PHA would have:

DR Cash

CR Accounts Receivable - Initial PHA

Typically, when the billing arrangement ceased the first set of transactions did not happen (the owners were not paid and the income was not recorded) because the receiving PHA had terminated the HAP contract. The receiving PHA failed to inform the initial PHA and continued to debit “Cash” and credit “Accounts Receivable” when the payment arrived from the initial

PHA. The large CR balance in the "Accounts Receivable" is abnormal and the receiving PHA should have recognized something was amiss.

When the receiving PHA returns funds it should not have received to the initial PHA, the receiving PHA would:

DR Accounts Receivable - Initial PHA

CR Cash

When all refunds are made, the "Accounts Receivable" balance should be zero or at normal levels.

INITIAL PHA. When the initial PHA recognized the obligation under the billing arrangement for the family that moved under the portability procedures it would have created the expense and the payable:

DR Expense - Control (and subsidiaries for HAP and administrative expenses)

CR Accounts Payable - Receiving PHA

When the initial PHA then paid the receiving PHA:

DR Accounts Payable - Receiving PHA

CR Cash

When the initial PHA receives the funds back from the receiving PHA:

DR Cash

CR Expenses - Control (and subsidiaries)

APPENDIX B

How Portability Works

What is Portability?

"Portability" in the Housing Choice Voucher (HCV) program refers to the process through which your family can transfer or "port" your rental subsidy when you move to a location outside the jurisdiction of the public housing agency (PHA) that first gave you the voucher when you were selected for the program **(the initial PHA)**.

The agency that will administer your assistance in the area to which you are moving is called the receiving PHA.

New families have to live in the jurisdiction of the initial PHA for a year before they can port. But, the initial PHA may allow new families to port during this one-year period.

What Happens Next?

1. You must notify the initial PHA that you would like to port and to which area you are moving.

2. The initial PHA will determine if you are eligible to move. For example, the PHA will determine whether you have moved out of your unit in accordance with your lease.

3. If eligible to move, the initial PHA will issue you a voucher (if it has not done so already) and send all relevant paperwork to the receiving PHA.

4. If you are currently assisted, you must give your landlord notice of your intent to vacate in accordance with your lease.

Contacting the Receiving PHA

1. Your case manager will let you know how and when to contact the receiving PHA. Your case manager must give you enough information so that you know how to contact the receiving PHA.

2. If there is more than one PHA that administers the HCV program where you wish to move, you may choose the receiving PHA. The initial PHA will give you the contact information for the PHAs that serve the area. If you prefer, you may request that the initial PHA selects the receiving PHA for you.
Generally, the initial PHA is not required to give you any other information about the receiving PHAs, but you may wish to find out more details when contacting them (such as whether the receiving PHA operates a Family Self-Sufficiency or Homeownership program).

See back for more details

See back for more details

How Portability Works

Before Porting, Things You Should Know

Subsidy Standards: The receiving PHA may have different subsidy standards. In other words, the initial PHA may have issued you a three-bedroom voucher, but the receiving PHA may, if appropriate for your family, issue you a two-bedroom voucher. Note, however, that the PHA's subsidy standards must comply with fair housing and civil rights laws. This includes processing reasonable accommodation requests that are necessary for qualified individuals with disabilities.

Payment Standards: The payment standards of the receiving PHA may be different for each PHA. Payment standards are what determine the amount of the rent that the PHA will pay on your behalf. If a receiving PHA's payment standards are lower than the initial PHA, then the portion of the rent you pay may be more than what you were paying at the initial PHA.

Re-screening: The receiving PHA may re-screen you using their own policies, which may be different than the initial PHA's policies and could result in them denying your request to move. When contacting the receiving PHA, you may want to ask whether they re-screen families moving into their area under portability and what are their policies for termination or denial of HCV assistance. This will assist you in determining if the receiving PHA's policies might prevent you from moving to their jurisdiction.

Time Management: You should manage the move so that you have enough time to arrive at the receiving PHA before the initial PHA voucher expires; otherwise, you may lose your assistance.

See front for more details

Once at the Receiving PHA

1. The receiving PHA will issue you a voucher to search for a unit in its jurisdiction. Your voucher must be extended by 30 days from the expiration date on the voucher issued by the initial PHA.

2. When you submit a request for tenancy approval, the time on your voucher will stop until you are notified in writing whether the unit is approved or denied. The request for tenancy approval is the form you will submit to the receiving PHA once you find a unit, so that the receiving PHA can determine whether you may rent that unit under the program.

3. If you decide that you do not want to lease a unit in the area, the receiving PHA will return your voucher to the initial PHA. The initial PHA is not required to, but may, extend the term of your voucher so that you may search for a unit in the initial PHA's jurisdiction or port to another jurisdiction.

Any additional instructions will be provided by the receiving PHA. PHAs must comply with all nondiscrimination and equal opportunity requirements in the portability process, including, but not limited to, the Fair Housing Act, Section 504 of the of the Rehabilitation Act, Title VI of the Civil Rights Act, and title II of the Americans with Disabilities Act.

See front for more details

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitle A and Chapters II, IV, V, VIII, IX, and XX

[Docket No. FR–5976–N–01]

Housing Opportunity Through Modernization Act of 2016: Initial Guidance

AGENCY: Office of General Counsel, HUD.

ACTION: Initial implementation guidance.

SUMMARY: On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016 (HOTMA). This new statute provides updates and improvements to statutes that authorize and prescribe requirements for multiple HUD programs and the Department of Agriculture's single-family housing guaranteed loan program. The purpose of this document is to advise HUD program participants and interested members of the public of those statutory provisions that are effective immediately and those provisions that will require further action by HUD to become effective or to be used by HUD program participants.

DATES: *Effective Date:* This document is effective October 24, 2016.

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact the following people (none of the phone numbers are toll-free):

Public Housing, Housing Choice Voucher (including project-based vouchers), and moderate rehabilitation programs: email *HOTMAquestions@hud.gov.*

Multifamily Housing programs: Danielle Garcia, Branch Chief, Assistant Housing Oversight Division, Office of Housing, 202–402–2768.

HOME Investment Partnerships program: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, 202–708–2684.

Self-Help Homeownership Opportunity Program (SHOP) program: Jackie Williams, Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, (202) 708–2290.

Housing Opportunities for Persons With AIDS (HOPWA) program: Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, 202–402–5374.

Homeless programs: Norm Suchar, Director, Office of Special Needs Assistance, Office of Community Planning and Development, 202–708–4300.

The address for all offices is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 29, 2016, President Obama signed HOTMA into law (Pub. L. 114–201, 130 Stat. 782). HOTMA amends the United States Housing Act of 1937 (1937 Act) and other housing laws to modify multiple HUD programs, along with the Department of Agriculture's Single Family Housing Guaranteed Loan Program. Significant amendments include setting a maximum income level for continued occupancy in public housing, expanding the availability of Family Unification Program vouchers for children aging out of foster care, changes to the housing quality standards for Section 8 Voucher units, multiple changes to the Project-Based Voucher program, modifying requirements for mortgage insurance for condominiums under the Federal Housing Administration, creating a Special Assistant for Veterans Affairs in HUD, and changing the allocation formula for the Housing Opportunities for Persons With AIDS (HOPWA) program.

II. Implementation, Generally

HOTMA makes several of its provisions effective upon enactment (July 29, 2016). Other statutory changes made by HOTMA become effective only after the issuance of a notice or regulations by HUD, or at the start of the calendar year following the publication of a notice or regulation. Some provisions require rulemaking to implement, while some are strictly changes in terminology or conforming changes.

This document is intended to:

(1) Advise the public of statutory provisions that are effective immediately and advise of actions that may or should be taken now to comply with the changes (Section III of the document).

(2) Identify those provisions of HOTMA that are not effective until HUD subsequently issues a notice or regulation (Section IV of the document).

This document does not provide a section-by-section analysis of HOTMA, nor does it provide guidance on all sections. However, the guidance in this document, read together with the statutory language,[1] is intended to aid HUD program participants and the public generally in understanding (1) the prompt action HUD recommends be taken now or in the very near future, and (2) the reasons for any deferred action with respect to certain statutory provisions. HUD is committed to working closely with its program participants to see that the changes made by HOTMA are successfully implemented and that these programs are significantly improved to provide assistance to the families HUD serves.

III. Provisions of HOTMA Effective Upon Enactment or Otherwise Already in Effect—No HUD Action Required To Implement

This section outlines provisions of HOTMA that are effective upon enactment of HOTMA (July 29, 2016) and can be implemented immediately.

[1] The text of HOTMA, along with a summary prepared by the Congressional Research Service, can be found at *https://www.congress.gov/bill/114th-congress/house-bill/3700.*

HUD notes that in many cases the statutory provisions listed in this section may require conforming rulemaking at a later date to update HUD's regulations to reflect these statutory changes. HUD may also issue other types of guidance to further explain these provisions. Below is the list of HOTMA sections that are effective immediately.

Section 102(d). Reasonable Accommodation Payment Standards

Section 102(d) of HOTMA amends section 8(o) of the 1937 Act to allow PHAs to establish a payment standard of up to 120 percent of the FMR as a reasonable accommodation for a person with a disability, without HUD approval.

Implementation action: The final rule on ''Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs,'' published on March 8, 2016, at 81 FR 12354, previously provided PHAs with the flexibility establish a payment standard up to 120 percent of the FMR as a reasonable accommodation for a person with a disability, effective April 7, 2016. As a result, no further action is needed to implement this section.

It is noted the PHA may also establish an exception payment standard of more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with 24 CFR part 8 for a family that includes a person with a disability, but in such cases must request approval from HUD.

Section 107. Establishment of Fair Market Rent

This section changes how HUD publishes Fair Market Rents (FMRs), and the procedure to allow PHAs and other interested parties to comment on the FMRs and request HUD to reevaluate the FMRs in a jurisdiction before those rents become effective. Section 107 also amends section 8(o)(1)(B) of the 1937 Act to provide that in the Housing Choice Voucher (HCV) Program no PHA is required, as a result of a reduction in the FMR, to reduce the payment standard applied to a family continuing to reside in a unit under a HAP contract at the time the FMR was reduced. Currently, if a reduction in the FMR causes the PHA's payment standard to exceed the basic range (110 percent of the FMR), the PHA is required to reduce the payment standard so that the payment standard would be within the basic range of the new FMR. The program regulations at 24 CFR 982.505(c)(3) further provide that for families under a housing assistance payment (HAP) contract at the time of the decrease in the payment standard, the new decreased payment standard would be applied to the family's subsidy calculation at the family's second regular re-examination following the decrease in the payment standard amount. As a result of the change in the law, the PHA may choose to continue to use the higher payment standard for the family's subsidy calculation for as long as the family continues to receive voucher assistance in that unit. If a PHA chooses to continue to use the higher payment standard for the subsidy calculation for the family, then the PHA must adopt policies in its administrative plan that further explain this provision.

Implementation action: This provision was effective upon enactment of HOTMA. HUD's FMRs for Fiscal Year 2017, published in the **Federal Register** on August 26, 2016, reflect the new procedures for calculation of FMRs. Effective July 29, 2016, PHAs may choose, but are no longer required, to reduce the payment standard for a family who remains under HAP contract at the family's second annual reexamination. HUD will issue additional guidance on this change in the future. PHAs with questions in the interim may contact the local HUD Field Office.

Section 110. Family Unification Program for Children Aging Out of Foster Care

This section of HOTMA makes changes to the Family Unification Program (FUP) for children aging out of foster care. The law revises the length of the term that a FUP-eligible youth may receive FUP assistance from 18 months to 36 months. Please note that this change applies to youth currently receiving FUP assistance as well as any new participants. In addition, the law revises the eligibility requirements for FUP-eligible youth. Previously, FUP-eligible youth must be at least 18 years old and not more than 21 and have left foster care at age 16 or older. Under the new law, FUP-eligible youth must: Be at least 18 years old and not more than 24; have left foster care at age 16 or older or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act; and be homeless or at risk of being homeless. PHAs should refer to the definition of ''at risk of homelessness'' at 24 CFR 576.2. HOTMA also requires HUD to issue guidance, after consultation with other appropriate Federal agencies, on how to improve coordination between PHAs and public child welfare agencies to carry out the FUP program.

Implementation action: The changes to the FUP program were effective upon enactment of HOTMA. PIH issued a letter on August 29, 2016, to FUP PHA Executive Directors to ensure that such PHAs are aware that this provision was effective upon enactment. In addition, HUD plans to issue the guidance on improving coordination between PHAs and public child welfare agencies by the statutory deadline of January 25, 2017.

Section 113. Preference for United States Citizens or Nationals

This section only applies to Guam and establishes a preference or priority in receiving financial assistance (*e.g.,* admission to public housing, the HCV program, etc.) for any citizen or national of the United States over aliens covered by section 141 of the Compacts of Free Association between the United States and the Marshall Islands, the Federated States of Micronesia, and Palau.

Implementation action: This provision was effective upon enactment of HOTMA. No regulatory action is needed for this section of HOTMA to be implemented.

Section 114. Exception to Public Housing Agency Resident Board Member Requirement

This section provides for an exception for certain jurisdictions (Housing Authority of the County of Los Angeles or any PHA in the States of Alaska, Iowa, and Mississippi) from the resident board member requirements under section 2(b) of the 1937 Act.

Implementation action: This provision was effective upon enactment of HOTMA, and the exception has been in effect for a number of years through the appropriations acts. As a result, no further action is needed to implement this section. This statutory provision does not alter the regulatory provision at 24 CFR 964.405(b).

Section 402. Inclusion of Public Housing Agencies and Local Development Authorities in Emergency Solutions Grants

Section 402 of HOTMA amended section 414(c) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11373(c)) to authorize local governments that receive Emergency Solutions Grants (ESG) funds to subaward all or a portion of those funds to public housing agencies, as defined under section 3(b)(6) of the 1937 Act (42 U.S.C. 1437a(b)(6)), and local redevelopment authorities, as defined under State law. *Implementation action:* This provision was effective upon

enactment of HOTMA. No regulatory action is needed to authorize local governments to subaward ESG funds to public housing agencies and local redevelopment authorities. However, HUD intends to issue guidance explaining the conditions and requirements that apply to subawarding ESG funds to PHAs and local redevelopment authorities.

Section 501. Inclusion of Disaster Housing Assistance Program in Certain Fraud and Abuse Prevention Measures

This section provides that the Disaster Housing Assistance Program shall be considered a program of HUD under section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 for the purpose of income verifications.

Implementation action: This provision was effective upon enactment of HOTMA, and it has previously been in effect through HUD appropriations acts for a number of years, and therefore no additional action is needed for implementation.

Section 502. Energy Efficiency Requirements Under Self-Help Homeownership Opportunity Program

This provision prohibits HUD from requiring units developed under the Self-Help Homeownership Opportunity Program (SHOP) to meet energy efficiency standards other than those in section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709).

Implementation action: This provision was effective upon enactment of HOTMA. The changes will be reflected in the future SHOP Notice of Funding Availability, and HUD will provide current grantees with additional information on how this provision affects their prior year funding.

Section 701. Formula and Terms for Allocations To Prevent Homelessness for Individuals Living With HIV or AIDS

This provision makes several changes to the Housing Opportunities for Persons with AIDS (HOPWA) program. These changes include: Alterations to the allocation formula; continued eligibility of Fiscal Year 2016 grantees; authorization to award funds to alternative grantees as requested by the original grantee in accordance with specified criteria; and amended definitions.

Implementation action: These changes apply to the formula for Fiscal Year 2017 funds. HUD's Office of Community Planning and Development (CPD) is preparing more detailed guidance to explain how these changes will affect Fiscal Year 2017 funding. This section requires HUD to issue regulations in order to exercise discretion regarding reallocations of funds distributed by formula, and HUD is developing those regulations.

IV. Provisions That Require Rulemaking or Guidance by HUD

There are several provisions in HOTMA that amend HUD statutes but, under their own terms, are not effective until HUD issues a notice or regulation. Other provisions make changes to HUD statutes that, while effective upon enactment of HOTMA, require HUD rulemaking or the issuance of detailed guidance for implementation. This section addresses both types of HOTMA provisions requiring further HUD action. For these provisions, PHAs, multifamily owners, or grantees may not use the provisions of HOTMA until HUD issues a rule or notice.

Section 101(a)(1). Initial Inspections in Section 8 Voucher Units

Section 101(a)(1) amends section 8(o) of the 1937 Act to authorize assistance payments for up to 30 days if an initial inspection reveals non-life-threatening defects and to authorize occupancy of units before an inspection by the PHA if the property has met the requirements of an alternative inspection in the previous 24 months.

Implementation action: HUD has the ability to implement these changes by notice or by regulation, and the statutory amendments are not effective until the notice or regulation is issued. HUD is considering the appropriate method for implementation.

Sections 101(a)(2) and (3). Enforcement of Housing Quality Standards for Section 8 Voucher Units

Section 101(a)(3) amends section 8(o) of the 1937 Act to require timeframes for correcting deficiencies discovered by inspections. The statute requires life-threatening deficiencies to be corrected within 24 hours and sets the time for correcting other deficiencies at 30 days unless the PHA determines otherwise. The section also provides families with 90 days to relocate to a new unit if an owner fails to correct the defaults and allows PHAs to use up to two months of any assistance amounts withheld or abated for costs directly associated with relocation of these families. Section 101(a)(2) is a technical amendment to make room for the new subparagraph (G) added by section 101(a)(3).

Implementation action: For section 101(a)(3), HUD is in the process of developing regulations, and section 101(a)(2) requires only a conforming rule by HUD. The statutory amendments made by sections 101(a)(2) and (3) will only go into effect when the regulations are issued to implement the new subparagraph added by section 101(a)(3).

Sections 102(a), (c), and (e). Income Reviews

Section 102(a) of HOTMA amends section 3(a) of the 1937 Act to revise the frequency of family income reviews and the calculation of income. Specifically, this section requires that reviews of family income must be conducted upon admission and annually thereafter, depending on certain decreases or increases in annual adjusted income. This section also requires HUD, in consultation with other appropriate Federal agencies, to develop electronic procedures enabling PHAs to access income determinations for other Federal means-tested programs.

Section 102(c) of HOTMA amends section 3(b) of the 1937 Act to change the definitions for the public housing and Section 8 programs of income and adjusted income for each member of the household who is 18 years or older and unearned income for each dependent who is less than 18. The changes in definitions require rulemaking to implement, and the statutory amendments are not effective until the rulemaking is complete.

Section 102(e) changes the definition of ''income'' to ''annual adjusted income'' for the Enhanced Voucher Program.

Implementation action: HUD has the ability to implement these changes by notice or by regulation, and the statutory amendments are not effective until the beginning of the calendar year after the notice or regulation is issued. HUD is considering the appropriate method for implementation.

Section 102(f). Income Review for Project-Based Housing

This section amends strikes the last sentence of paragraph (3) of section 8(c) of the 1937 Act (42 U.S.C. 1437f(c)(3). This eliminates the requirement that reviews of family income shall be made no less frequently than annually.

Implementation action: HUD has the ability to implement these changes by notice or by regulation, and the statutory amendments are not effective until the beginning of the calendar year after the notice or regulation is issued. HUD is considering the appropriate method for implementation.

Section 103. Limitation on Public Housing Tenancy for Over-Income Families

The statute sets the maximum amount of annual adjusted income for continued occupancy in public housing at 120 percent area median income (AMI), which the Secretary may adjust based on certain statutory factors. The statute also requires that a family is only subject to this limitation if their annual adjusted income meets or exceeds the maximum amount for two consecutive years. In addition, for a family meeting this threshold for two consecutive years, the PHA has the option to terminate the family's tenancy or to allow them to remain in the unit at a higher rent amount.

Implementation action: The statutory language recognizes that it is necessary in some areas to deviate from the income cap of 120 percent AMI. In order to allow HUD to exercise its discretion in a fair and effective manner, HUD will issue additional information in the future. In addition, the new section 16(a)(5)(A)(i)(II) of the 1937 Act requires regulations to determine the amount of subsidy allocated to a specific unit in order to determine family rent in the event a family chooses to remain in the unit.

Section 104. Limitation on Eligibility for Assistance Based on Assets

Section 104 sets limits on the assets that families residing in assisted housing may have. Section 104 also directs HUD, beginning October 1, 2017, to direct PHAs to require all applicants and recipients under the 1937 Act to authorize the PHA to obtain financial information needed in connection with a determination with respect to eligibility.

Implementation action: This requirement must be put in place by rulemaking.

Section 105. Units Owned by Public Housing Agencies

This section provides that the term 'owned by a public housing agency' means, with respect to a dwelling unit, that the dwelling unit is in a project that is owned by a PHA, by an entity wholly controlled by a PHA, or by a limited liability company or limited partnership in which a PHA (or an entity wholly controlled by a PHA) holds a controlling interest in the managing member or general partner. This section also provides that a dwelling unit is not deemed to be owned by a PHA where the PHA holds a fee interest as ground lessor in the property on which the unit is situated, holds a security interest under a mortgage or deed of trust on the unit, or holds a non-controlling interest in an entity which owns the unit or in the managing member or general partner of an entity which owns the unit.

Implementation action: PHAs should continue their current practices until HUD can issue additional information on how affected PHAs can comply with any new requirements.

Section 106. PHA Project-Based Assistance

This section makes several statutory changes to the Project-Based Voucher (PBV) Program in section 8(o)(13) of the 1937 Act. The amendments include (1) changing the portfolio limitation on PBV vouchers from a funding to a unit calculation and allowing for additional project-basing of vouchers for homeless families, families with veterans, supportive housing for persons with disabilities or elderly persons, or in areas where vouchers are difficult to use; (2) changing the cap on the number of PBV units in a project to be the greater of 25 units in a project or 25 percent of the units in a project; (3) allowing PHAs to provide for an initial PBV contract of up to 20 years; (4) providing owners and PHAs the ability to adjust rents based on an operating cost adjustment factor; (5) permitting owners to use site-based waiting lists; (6) allowing PHAs to attach assistance to structures in which the PHA has an ownership interest or control without following a competitive process; and (7) allowing PHAs to use project-based HUD–VASH and FUP vouchers under the same policies and procedures applicable to general purpose vouchers.

Implementation action: HUD has the ability to implement these changes by notice or regulation, and the statutory amendments are not effective until the notice or regulation is issued. Some sections require regulations to add onto baselines set by the statute. HUD is considering the appropriate method for implementation.

Section 109. Public Housing Capital and Operating Funds

Section 109 revises section 9 of the 1937 Act regarding (1) PHAs establishing a Capital Fund Replacement Reserve, for which HUD may allow a PHA to transfer more than 20 percent of its operating fund to establish the reserve; (2) a 20 percent operating funds cap for capital improvements; and (3) PHA accounting and reporting on replacement reserves funds.

Implementation action: These statutory changes are effective upon the enactment of HOTMA. However, in order for PHAs to implement the changes, additional guidance or rulemaking is required.

Section 112. Use of Vouchers for Manufactured Housing

Section 112(b) of HOTMA extends the definition of ''rent'' for vouchers to include monthly payments for purchasing a manufactured home, tenant-paid utilities, and monthly rent for real property.

Implementation action: These statutory changes are only effective upon issuance by HUD of an implementing notice. The statutory amendments are not effective until HUD issues that implementation notice.

Section 301. Modification of FHA Requirements for Mortgage Insurance for Condominiums

Section 301 mandates several changes to FHA's mortgage insurance for condominiums, including changes to requirements on project recertification, exceptions to the percentage of floor space that may be used for nonresidential or commercial purposes, private transfer fee covenants, and the minimum required percentage of units that must be owner occupied.

Implementation action: Some of these changes must be done by regulations, while the revision to the owner occupancy percentage may be done by rulemaking or an administrative document. HUD issued a proposed rule to implement provisions on all these subjects other than transfer fees, and including general parameters on owner occupancy, on September 28, 2016, at 81 FR 66565. In the near future, HUD will be issuing a Mortgagee Letter to establish the specific owner occupancy percentage. For other provisions of section 301, HUD is considering the appropriate implementation action.

Section 401. Definition of Geographic Area for Continuum of Care Program

Section 401 requires HUD to issue a notice by October 27, 2016 defining ''geographic area'' for the Continuum of Care (CoC) program.

Implementation action: HUD is currently developing the notice.

Section 701. HOPWA Allocations

Section 701 of HOTMA adds four paragraphs to section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)). The new paragraph (1)(C) allows the Secretary to change the allocation formula set in paragraph (1)(A) to account for differences in housing costs and poverty rates. The new paragraph (4) allows the Secretary to set criteria by which the Secretary

determines a grantee is unable to properly administer its allocation.

Implementation action: Both of these provisions require HUD to issue regulations to exercise the Secretary's discretion, and HUD is developing those regulations.

Dated: October 12, 2016.

Ariel Pereira,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2016–25147 Filed 10–21–16; 8:45 am]

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11/16/16 *Federal Register:* Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs; Final Rule

80724 **Federal Register** / Vol. 81, No. 221 / Wednesday, November 16, 2016 / Rules and Regulations

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 91, 92, 93, 200, 247, 574, 576, 578, 880, 882, 883, 884, 886, 891, 905, 960, 966, 982, and 983

[Docket No. FR–5720–F–03]

RIN 2501–AD71

Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements in HUD's regulations the requirements of the 2013 reauthorization of the Violence Against Women Act (VAWA), which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. The 2013 reauthorization (VAWA 2013) expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs (collectively, the Section 8 programs) that were covered by the 2005 reauthorization of the Violence Against Women Act (VAWA 2005). Additionally, the 2013 law provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking. Specifically, this rule amends HUD's generally applicable regulations, HUD's regulations for the public housing and Section 8 programs that already pertain to VAWA, and the regulations of programs newly covered by VAWA 2013.

In addition to this final rule, HUD is publishing a notice titled the Notice of Occupancy Rights under the Violence Against Women Act (Notice of Occupancy Rights) that certain housing providers must give to tenants and applicants to ensure they are aware of their rights under VAWA and these implementing regulations, a model emergency transfer plan that may be used by housing providers to develop their own emergency transfer plans, a model emergency transfer request form that housing providers could provide to tenants requesting an emergency transfer under these regulations, and a new certification form for documenting incidents of domestic violence, dating violence, sexual assault, and stalking that must be used by housing providers.

This rule reflects the statutory changes made by VAWA 2013, as well as HUD's recognition of the importance of providing housing protections and rights to victims of domestic violence, dating violence, sexual assault, and stalking. By increasing opportunities for all individuals to live in safe housing, this will reduce the risk of homelessness and further HUD's mission of utilizing housing to improve quality of life.

DATES: *Effective Date:* These regulations are effective on December 16, 2016.

Compliance Date: Compliance with the rule with respect to completing an emergency transfer plan and providing emergency transfers, and associated recordkeeping and reporting requirements, is required no later than May 15, 2017.

FOR FURTHER INFORMATION CONTACT: For information about: HUD's Public Housing program, contact Monica Shepherd, Director Public Housing Management and Occupancy Division, Office of Public and Indian Housing, Room 4204, telephone number 202–402–5687; HUD's Housing Choice Voucher program and Project-Based Voucher, contact Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4216, telephone number 202–402–6050; HUD's Multifamily Housing programs, contact Yvette M. Viviani, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202–708–3000; HUD's HOME Investment Partnerships program, contact Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, telephone number 202–708–2684; HUD's Housing Opportunities for Persons With AIDS (HOPWA) program, contact Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, Room 7248, telephone number 202–402–5374; and HUD's Homeless programs, contact Norman Suchar, Director, Office of Special Needs Assistance, Office of Community Planning and Development, telephone number 202–708–4300. The address for all offices is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

This rule implements the HUD housing provisions in VAWA 2013, which are found in Title VI of the statute. (See Pub. L. 113–4, 127 Stat. 54, approved March 7, 2013, at 127 Stat. 101). VAWA 2005 (Pub. L. 109–162, 119 Stat. 2959, approved January 5, 2006) applied VAWA protections to certain HUD programs by amending the authorizing statutes for HUD's public housing and section 8 programs to provide protections for victims of domestic violence, dating violence, and stalking. VAWA 2013 removes these amendments from the public housing and section 8 authorizing statutes, and in its place provides stand-alone VAWA protections that apply to these programs, as well as additional HUD programs, and also to victims of sexual assault. In addition, VAWA 2013 expands protections for victims of domestic violence, dating violence, sexual assault, and stalking by amending the definition of domestic violence to include violence committed by intimate partners of victims, and by providing that tenants cannot be denied assistance because an affiliated individual of theirs is or was a victim of domestic violence, dating violence, sexual assault, or stalking (collectively VAWA crimes). The new law also expands remedies for victims of domestic violence, dating violence, sexual assault, and stalking by requiring covered housing providers to have emergency transfer plans, and providing that if housing providers allow for bifurcation of a lease, then tenants should have a reasonable time to establish eligibility for assistance under a VAWA-covered program or to find new housing when an assisted household has to be divided as a result of the violence or abuse covered by VAWA.

VAWA 2013 provides protections for both applicants for and tenants of assistance under a VAWA-covered housing program. VAWA 2013 covers applicants, as well as tenants, in the statute's nondiscrimination and notification provisions. However, the emergency transfer and bifurcation provisions of the rule are applicable solely to tenants. The statutory provisions of VAWA that require a notice of occupancy rights, an emergency transfer plan, and allow for the possibility of bifurcation of a lease, support that it is a rental housing situation that is the focus of the VAWA protections. However, as described in this final rule, the core statutory protections of VAWA that prohibit

denial or termination of assistance or eviction solely on the basis that an individual is a victim of domestic violence, dating violence, stalking or sexual assault apply to certain housing programs subsidized by HUD even where there is no lease. HUD funds many shelters, temporary housing, short-term supported housing, and safe havens, and no person is to be denied access to such facility or required to leave such facility solely on the basis that the person is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. It is equally important to note, as was noted in HUD's proposed rule, that the core statutory protections of VAWA 2013 that apply to applicants and tenants, were applicable upon enactment of VAWA 2013. As was discussed in HUD's proposed rule and reiterated in this final rule, regulations were not necessary to mandate adherence to this nondiscrimination requirement. That is, if an individual meets all eligibility requirements and complies with all occupancy requirements, the individual cannot be denied assistance or have assistance terminated solely on the basis that the individual is a victim of domestic violence, dating violence, stalking, or sexual assault.

This rule better enables housing providers to comply with the mandates of VAWA 2013, and it reflects Federal policies that recognize that all individuals should be able to live in their homes without fear of violence. The implementation of VAWA protections in HUD programs increases opportunities for all individuals to live in safe housing and reduces the risk of homelessness for individuals who might otherwise be evicted, be denied housing assistance, or flee their homes.

Summary of the Major Provisions of This Regulatory Action

Major provisions of this rule include:

- Specifying ''sexual assault'' as a crime covered by VAWA in HUD-covered programs.
- Establishing a definition for ''affiliated individual'' based on the statutory definition and that is usable and workable for HUD-covered programs.
- Applying VAWA protections to all covered HUD programs as well as the Housing Trust Fund, which was not statutorily listed as a covered program.
- Ensuring that existing tenants, as well as new tenants, of all HUD-covered programs receive notification of their rights under VAWA and HUD's VAWA regulations.
- Establishing reasonable time periods during which a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking may establish eligibility to remain in housing, where the tenant's household is divided due to a VAWA crime, and where the tenant was not the member of the household that previously established eligibility for assistance.
- Establishing that housing providers may, but are not required to, request certain documentation from tenants seeking emergency transfers under VAWA.
- Providing for a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under the plan.
- Revising and establishing new program-specific regulations for implementing VAWA protections in a manner that is workable for each HUD-covered program.

Please refer to section II of this preamble, entitled ''This Final Rule'' for a more detailed discussion of all the changes made to HUD's existing regulations by this rule. In developing this rule, HUD identified outdated terminology in its regulations (for example, the use of the term ''alcohol abuser'' in part 982). HUD will be issuing a future rule to update and correct such terms.

Costs and Benefits

The benefits of HUD's rule include codifying in regulation the protections that VAWA 2013 provides applicants to and tenants of HUD programs covered by VAWA; strengthening the rights of victims of domestic violence, dating violence, sexual assault, or stalking in HUD-covered programs, including notification and confidentiality rights; and possibly minimizing the loss of housing by such victims through the bifurcation of lease provision and emergency transfer provisions. With respect to rental housing, VAWA was enacted to bring housing stability to victims of domestic violence, dating violence, sexual assault or stalking. It was determined that legislation was needed to require protections for such victims because housing providers often responded to VAWA crimes occurring in one of their rental units or on their property by evicting the tenant regardless of whether the tenant was a victim of domestic violence, dating violence, sexual assault, or stalking, and refusing to rent to such victims on the basis that violence would erupt in the victim's unit or on a housing provider's property if the individual was accepted as a tenant. To ensure that housing providers administering HUD assistance did not respond to domestic violence, dating violence, or stalking by denying or terminating assistance, VAWA 2005 brought HUD's public housing and Section 8 programs under the statute's purview, and VAWA 2013 covered the overwhelming majority of HUD programs providing rental assistance.

The costs of the regulations are primarily paperwork costs. These are the costs of providing notice to applicants and tenants of their occupancy rights under VAWA, the preparation of an emergency transfer plan, and documenting an incident or incidents of domestic violence, dating violence, sexual assault, and stalking. The costs, however, are minimized by the fact that VAWA 2013 requires HUD to prepare the notice of occupancy rights to be distributed to applicants and tenants; to prepare the certification form that serves as a means of documenting the incident or incidents of domestic violence, dating violence, sexual assault, and stalking; and to prepare a model emergency transfer plan that guides the entities and individuals administering the rental assistance provided by HUD in developing their own plans. In addition, costs to covered housing providers will be minimized because HUD will translate the notice of occupancy rights and certification form into the most popularly spoken languages in the United States, and HUD has prepared a model transfer request form that housing providers and tenants requesting emergency transfer may use. There may also be costs with respect to a tenant claiming the protections of VAWA and a covered housing provider responding to such incident, although these costs will vary depending on the incidence of claims in a given year and the nature and complexity of the situation.

I. Background

On March 7, 2013, President Obama signed into law VAWA 2013 (Pub. L. 113–4, 127 Stat. 54). VAWA 2013 reauthorizes and amends VAWA 1994 (Title IV, sec. 40001–40703 of Pub. L. 103–322), which was previously reauthorized by VAWA 2000 (Pub. L. 106–386) and VAWA 2005 (Pub. L. 109–162, approved January 5, 2006, with technical corrections made by Pub. L. 109–271, approved August 12, 2006).

The VAWA 2005 reauthorization brought HUD's public housing program and HUD's Section 8 programs under coverage of VAWA by amending the authorizing statutes for those programs, sections 6 and 8 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437 *et seq.*). VAWA 2005 established that being a victim of domestic violence, dating violence, or

stalking cannot be the basis for denial of assistance or admission to public or Section 8 housing, and provided other protections for victims. VAWA 2005 also contained requirements for notification to tenants of the rights and protections provided under VAWA, provisions on the rights and responsibilities of public housing agencies (PHAs) and owners and managers of assisted housing, and provisions pertaining to acceptable documentation of incidents of VAWA crimes and maintaining the confidentiality of the victim. HUD regulations pertaining to VAWA 2005 protections, rights, and responsibilities are codified in 24 CFR part 5, subpart L.

Title VI of VAWA 2013, ''Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking,'' contains the provisions that are applicable to HUD programs. Specifically, section 601 of VAWA 2013 removes VAWA protections from the 1937 Act and adds a new chapter to Subtitle N of VAWA 1994 (42 U.S.C. 14043e *et seq.*) entitled ''Housing Rights.'' As applicable to HUD, this chapter provides additional protections for tenants beyond those provided in VAWA 2005, and expands VAWA protections to other HUD programs.

On August 6, 2013, at 78 FR 47717, HUD published a **Federal Register** notice that provided an overview of the applicability of VAWA 2013 to HUD programs. This notice listed the new HUD housing programs covered by VAWA 2013, described the changes that VAWA 2013 made to existing VAWA protections, and identified certain issues for which HUD specifically sought public comment. HUD solicited public comment for a period of 60 days, and the public comment period closed on October 7, 2013. HUD appreciates the public comments submitted in response to the August 6, 2013, notice, and these public comments were taken into consideration in the development of this rule. The public comments on the August 6, 2013, notice can be found at the *www.regulations.gov* government-wide portal, under docket number FR–5720–N–01, at *http://www.regulations.gov/#!docketDetail;D=HUD-2013-0074.*

Many of the comments submitted in response to the August 6, 2013, notice asked HUD to advise program participants that certain VAWA protections are in effect without the necessity of rulemaking. In response to these comments, HUD offices administering HUD-covered programs reached out to participants in their programs to advise them that the core statutory protections of VAWA—not denying or terminating assistance to, or evicting an individual solely on the basis that an individual is or has been a victim of domestic violence, dating violence, stalking, or sexual assault—were effective upon enactment and do not require notice and comment rulemaking for implementing these protections and that they should proceed to provide the basic VAWA protections.[1]

On April 1, 2015, HUD published its proposed rule that provided the amendments to HUD's existing regulations that HUD determined necessary to fully implement VAWA 2013. The public comment period on the April 1, 2015, rule closed on June 1, 2015. HUD received 94 comments, including duplicate mass mailings, resulting in 68 distinct comments. The comments were submitted by housing authorities, other housing providers, organizations that represent or provide services to specific groups of housing providers, organizations that advocate for victims and survivors of domestic and sexual violence, state coalitions against domestic violence, other advocacy and not-for-profit organizations and associations, state and local government agencies, a tribal organization, and numerous unaffiliated individuals. All public comments can be viewed at: *http://www.regulations.gov/#!docketDetail;D=HUD-2015-0028.*

Most commenters expressed support for the rule, with different questions and comments about specific provisions. There were many comments regarding emergency transfers, lease bifurcation, and documentation requirements, as well as comments on eligibility for and limitations on VAWA protections, the roles and responsibilities of different housing providers under different HUD programs, the notice of occupancy rights, implementation and enforcement of the rule, confidentiality, and other issues. In addition, there were a number of program-specific comments. HUD responds to issues raised by the public comments in Section II.B. of this preamble.

This final rule reflects the Federal government's recognition that all people have a right to live their lives safely. On September 9, 2014, in Presidential Proclamation 9164—Twentieth Anniversary of the Violence Against Women Act, and on September 30, 2014, in Presidential Proclamation 9181—National Domestic Violence Awareness Month, 2014, President Obama discussed the ''basic human right to be free from violence and abuse.'' The implementation of the policies laid out in this rule will help to enforce this basic human right.

HUD notes that, in addition to utilizing housing protections in VAWA, victims of domestic violence, dating violence, sexual assault, and stalking, and those assisting them, may wish to consider other available protections and assistance. On the Federal level, for example, the U.S. Department of Justice (DOJ) administers programs that provide funding for victims of crime, including victims covered by VAWA. The Office for Victims of Crime (OVC), part of DOJ, administers the Crime Victims Fund, which provides direct reimbursement to crime victims for financial losses from crimes including medical costs, mental health counseling, and lost wages or loss of support. This provides reimbursement for victims during a time when they may be facing financial constraints. The Crime Victims Fund may also be used to fund transitional housing and shelter for victims of domestic violence, dating violence, sexual assault, or stalking who need the transitional housing or shelter because they were a victim of one of these crimes, and to fund relocation expenses for those who need to move because they were a victims of domestic violence, dating violence, sexual assault, or stalking. OVC also provides grants to public and non-profit organizations for essential services to victims of crime, including emergency shelter, and the Office of Violence Against Women (OVW), also part of DOJ, administers 24 grant programs where funds are provided to states, territories, local government, non-profit organizations, and community organizations for various targeted persons. Information about the Crime Victims Fund is available at: *http://www.ovc.gov/pubs/crimevictimsfundfs/intro.html#VictimAssist* and information about OVW grants is available at *http://www.justice.gov/ovw/grant-programs.* Victims of domestic violence, dating violence, sexual assault, and stalking may consult with local victim services providers and state and local social service agencies to

[1] See, for example, the letter to Executive Directors of public housing agencies from the Assistant Secretary for Public and Indian Housing, issued September 30, 2013, at *http://portal.hud.gov/hudportal/documents/huddoc?id=sept2013vawaltr_phas.pdf,* as well as communications from HUD's HOME Investment Partnerships Programs (HOME) at *https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf,* and from HUD's Office of Special Needs Assistance Programs at *https://www.onecpd.info/news/reauthorization-of-the-violence-against-women-act-vawa/.*

determine whether funding and other forms of help and support may be available.

Further, victims of domestic violence, dating violence, sexual assault, and stalking should be aware that State and local laws may provide greater protections than Federal law, and local victim service providers and social service agencies may have further information regarding this.

II. This Final Rule

A. Overview of Changes Made at the Final Rule Stage

After review and consideration of the public comments and upon HUD's further consideration of VAWA 2013 and the issues raised in the proposed rule, HUD has made certain changes in this final rule. The following highlights the substantive changes made by HUD in this final rule from the proposed rule.

The final rule:

- Clarifies that, consistent with HUD's nondiscrimination and equal opportunity requirements, victims of domestic violence, dating violence, sexual assault, and stalking cannot be discriminated against on the basis of any protected characteristics (including race, color, religion, sex, disability, familial status, national origin, or age), and HUD programs must also be operated consistently with HUD's Equal Access Rule (HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status). (See § 5.2001(a).)
- Provides that in regulations governing short-term supported housing, emergency shelters, and safe havens, these forms of shelter are subject to the core protections of VAWA that prohibit denial of admission or eviction or termination to an individual solely on the basis that the individual is a victim of domestic violence, dating violence, or stalking, or sexual assault. (See §§ 574.604(a)(2), 576.409(f), and 578.99(j)(9).)
- Revises the definition of ''affiliated individual'' to incorporate situations where an individual has guardianship over another individual who is not a child. (See § 5.2003.)
- Revises the definition of ''domestic violence'' to incorporate a definition of ''spouse or intimate partner'' rather than cross-reference to another definition of the term, and to eliminate the cross-reference to ''crime of violence,'' a more restricting term. (See § 5.2003.)
- Provides that existing tenants in HUD-covered programs receive HUD's Notice of Occupancy Rights and accompanying certification form no later than one year after this rule takes effect, during the annual recertification or lease renewal process, if applicable, or through other means if there will be no annual recertification or lease renewal process for a tenant. (See § 5.2005(a)(2)(iv).)
- Retains the provision of HUD's regulations implementing VAWA 2005, for those HUD programs covered by VAWA 2005, which states that the HUD-required lease, lease addendum, or tenancy addendum must include a description of the specific protections afforded to the victims of VAWA crimes. (See § 5.2005(a)(4).)
- Clarifies that applicants may not be denied assistance and tenants may not have assistance terminated under a covered housing program for factors resulting from the fact that the applicant or tenant is or has been a victim of a VAWA crime. (See § 5.2005(b)(1).)
- Emphasizes that victims of sexual assault may qualify for an emergency transfer if they either reasonably believe there is a threat of imminent harm from further violence if they remain in their dwelling unit, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer. (See § 5.2005(e)(2)(ii).)
- Provides that emergency transfer plans must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of individuals seeking transfers or placement on waiting lists. (See § 5.2005(e)(3).)
- Provides that emergency transfer plans must allow for a tenant to transfer to a new unit when a safe unit is immediately available and the tenant would not have to apply in order to occupy the new unit (§ 5.2005(e)(5)).
- Provides that emergency transfer plans must describe policies for assisting tenants to make emergency transfers when a safe unit is not immediately available, both for situations where a tenant would not have to apply in order to occupy the new unit, and where the tenant would have to apply in order to occupy the new unit. (See § 5.2005(e)(6), § 5.2005(e)(7), and § 5.2005(e)(8)).
- Provides that the emergency transfer plans must describe policies for assisting tenants who have tenant-based rental assistance to make emergency moves with that assistance. (§ 5.2005(e)(9)).
- Adds a provision that emergency transfer plans may require documentation, as long as tenants can establish eligibility for an emergency transfer by submitting a written certification to their housing provider, and no other documentation is required for tenants who have established that they are victims of domestic violence, dating violence, sexual assault, or stalking to verify eligibility for a transfer. (See § 5.2005(e)(10).)
- Requires housing providers to make emergency transfer plans available upon request, and to make them publicly available whenever feasible. (See § 5.2005(e)(11).)
- Provides for a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under such plan. (See § 5.2005(e) or applicable program regulations)
- Emphasizes that tenants and applicants may choose which of the forms of documentation listed in the rule to give to housing providers to document the occurrence of a VAWA crime. (See § 5.2007(b)(1).)
- Provides that in cases of conflicting evidence, tenants and applicants who may need to submit third-party documentation to document occurrence of a VAWA crime have 30 calendar days to submit the third-party documentation. (See § 5.2007(b)(2).)
- Provides that if a covered housing provider bifurcates a lease under VAWA, any remaining tenants who had not already established eligibility for assistance must be given either the maximum time permitted by statute, or, if there are no statutory prohibitions, at least 90 calendar days from the date of bifurcation of the lease or until expiration of the lease, depending on the covered housing program, to establish eligibility for a covered housing program, or find alternative housing (See § 5.2009(b)(2).)
- Provides that if a family in a HOME-assisted rental unit separates under § 5.2009(a), the remaining tenant(s) will retain the unit. (See § 92.359(d)(1).)
- Provides that if a family receiving HOME tenant-based rental assistance separates under § 5.2009(a), the tenant(s) who are not removed will retain the HOME tenant-based rental assistance, and the participating jurisdiction must determine whether a tenant who was removed from the unit will receive HOME tenant-based rental assistance. (See § 92.359(d)(2).)
- Establishes VAWA regulations for the Housing Trust Fund, based on the regulations for the HOME program. (See 24 CFR part 93.)
- Emphasizes that VAWA protections apply to eviction actions for tenants in

housing under a HUD-covered housing program. (See 24 CFR 247.1(b).)

- Clarifies in the HOPWA regulations that the grantee or project sponsor is responsible for ensuring that the owner or manager of a facility assisted under HOPWA develops and uses a VAWA lease addendum. (See part 574.)
- Clarifies who is the covered housing provider for HUD's multifamily Section 8 project-based programs and the Section 202 and Section 811 programs, by providing that the covered housing provider is the owner for the Section 8 Housing Assistance Payments Programs for New Construction (part 880), for Section 515 Rural Rental Housing Projects (part 884), and for Special Allocations (part 886), as well as for the Section 202 and Section 811 programs (part 891) and that PHAs and owners each have certain responsibilities as covered housing providers for the Section 8 Moderate Rehabilitation Program (part 882), and the Section 8 State Housing Agencies Program for State Housing Agencies (part 883).
- Updates various section 8 and public housing VAWA 2005 regulations to broadly state that VAWA protections apply, so that all tenants and applicants, and not only those determined to be victims of VAWA crimes, receive statutorily required notification of their VAWA rights. (See parts 880, 882, 883, 884, 886, 891, 960, 966, and 982.)
- Clarifies that VAWA protections and requirements apply to mixed finance developments. (See § 905.100(g).)
- Clarifies that public housing agencies (PHAs), like other covered providers, may establish preferences for victims of dating violence, sexual assault, and stalking, in addition to domestic violence, consistent with their statutory authority. (See §§ 960.206(b)(4), 982.207(b)(4).)
- Clarifies that for the Section 8 Housing Choice Voucher and Project-Based Voucher programs, the PHA is the housing provider responsible for complying with VAWA emergency transfer provisions. (See §§ 982.53(e), 983.3(b).)

[Note: Remainder of notice omitted. For text of 24 CFR Parts 5 and 982, see CFR References section of this Coursebook]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 888, 982, 983, and 985

[Docket No. FR–5855–F–03]

RIN 2501–AD74

Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule applies the use of Small Area Fair Market Rents (Small Area FMRs) in the administration of the Housing Choice Voucher (HCV) program for certain metropolitan areas. This final rule provides for the use of Small Area FMRs, in place of the 50th percentile rent, the currently codified regulations, to address high levels of voucher concentration in certain communities. The use of Small Area FMRs is expected to give HCV tenants access to areas of high opportunity and lower poverty areas by providing a subsidy that is adequate to cover rents in those areas, thereby reducing the number of voucher families that reside in areas of high poverty concentration.

DATES: *Effective:* January 17, 2017.

FOR FURTHER INFORMATION CONTACT: For information about this rule, contact Peter B. Kahn, Director, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–2409 or Becky L. Primeaux, Director, Housing Voucher Management and Operations Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0477; email: *SAFMR_Rule@hud.gov*. The listed telephone numbers are not toll-free numbers. Persons with hearing or speech impairments may access this number through TTY by calling Federal Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Under this final rule, public housing agencies (PHAs) operating in designated metropolitan areas are required to use Small Area FMRs, while PHAs not operating in the designated areas have the option to use Small Area FMRs in administering their HCV programs. Other programs that use FMRs would continue to use area-wide FMRs. This final rule also provides for regulatory implementation of certain provisions of the Housing Opportunity Through Modernization Act (HOTMA) related to FMRs, as well as conforming regulatory changes to part 982 concerning the reduction in payment standards during the term of the Housing Assistance Payment (HAP) contract in the HCV program. Specifically, the final rule provides for publication of FMRs by way of the World Wide Web, and provides that PHAs are no longer required to reduce the payment standard for a family under HAP contract when the PHA is required to reduce the payment standard for its program as the result of a reduction in the FMR.

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule establishes a more effective means for HCV tenants to move into areas of higher opportunity and lower poverty by providing the tenants with a subsidy adequate to make such areas accessible and, consequently, help reduce the number of voucher families that reside in areas of high poverty concentration. Prior to this rule, subsidy for HUD's HCV program is determined by a formula that considers rent prices across an entire metropolitan area. However, rents can vary widely within a metropolitan area depending upon the size of the metropolitan area and the neighborhood in the metropolitan area within which one resides. The result of determining rents on the basis of an entire metropolitan area is that a voucher subsidy may be too high or may be too low to cover market rent in a given neighborhood. To date, HUD's policy for addressing high concentrations of voucher holders raises the level of the FMR from the 40th percentile to the 50th percentile (roughly a 7—8 percent increase) in the whole FMR area. This level of added subsidy has not been targeted to areas of opportunity, and consequently, this formula has not proven effective in addressing the problem of concentrated poverty and economic and racial segregation in neighborhoods. Experience with the 50th percentile regime has shown that the majority of HCV tenants use their vouchers in neighborhoods where rents are low but

poverty is generally high. Small Area FMRs will complement HUD's other efforts to support households in making informed choices about units and neighborhoods with the goal of increasing the share of households that choose to use their vouchers in low poverty opportunity areas.

This rule provides that in lieu of determining rents on the basis of an entire metropolitan area, rents will be determined on the basis of ZIP codes for those metropolitan areas with both significant voucher concentration challenges and market conditions where establishing FMRs by ZIP code areas has the potential to significantly increase opportunities for voucher families. ZIP codes are small enough to reflect neighborhood differences and provide an easier method of comparing rents within one ZIP code to another ZIP code area within a metropolitan area. Based on early evidence from PHAs using Small Area FMRs that are in place in certain metropolitan areas in the U.S., HUD believes that Small Area FMRs are more effective in helping families move to areas of higher opportunity and lower poverty.

B. Summary of the Major Provisions of the Regulatory Action

The major provisions of this final rule are set out in two sections: (1) Those that were in the proposed rule and retained at the final rule; and (2) those that were revised at the final rule or are new provisions at the final rule stage, developed in response to public comment: The major provisions are as follows:

1. Major Provisions at the Proposed Rule Stage Retained by This Final Rule

- Defines Small Area FMR areas as the U.S. Postal Service ZIP code areas within a designated metropolitan area.
- Provides for criteria by which Small Area FMRs will be set. Small Area FMRs will be set for metropolitan areas where the area includes the following criteria: number of HCVs under lease (initially, 2,500 or more); the standard quality rental stock, within the metropolitan area, that is in small areas (that is ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR (initially 20 percent or more); and the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas over the entire metropolitan area exceeds a specified threshold (initially 1.55). (This final rule also adopts additional criteria for setting Small Area FMRs for a metropolitan area, see below.)
- Defines ''concentrated low-income areas'' to mean those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or any tract in the metropolitan FMR area where 50 percent or more of the households earn incomes at less than 60 percent of the area median income (AMI) and are designated as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42).
- Provides for designation of Small Area FMR areas at the beginning of a Federal fiscal year and makes additional area designations every 5 years thereafter as new data becomes available.
- Requires if a metropolitan area meets the criteria for application of Small Area FMRs, that all PHAs administering HCV programs in that area will be required to use Small Area FMRs.
- Provides that a PHA that is administering an HCV program in a metropolitan area that is not subject to application of Small Area FMRs may opt to use Small Area FMRs by seeking approval of HUD's Office of Public and Indian Housing through written request to such office.
- For all rent determinations of FMRs, 40th percentile or Small Area FMRs, replaces ''the most recent decennial census'' with the ''most recent American Community Survey conducted by the U.S. Census Bureau.''
- Provides that metropolitan areas with FMRs set at the 50th percentile rent will transition to either (1) the 40th percentile rent at the expiration of the 3-year period for the 50th percentile rent, or (2) designation as a Small Area FMR area in accordance with the criteria for determining a Small Area FMR area.
- Provides that a PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with the regulations in 24 CFR 982.503(f) that are changed by this final rule. PHAs, however, would be required to continue to meet the provisions of 24 CFR 982.503(f) annually in order to maintain payment standards based on 50th percentile rents.
- Removes the existing regulations at 24 CFR 888.113 that provide for FMRs to be set at the 50th percentile rent. However, for areas not selected for implementation of Small Area FMRs, the final rule does not revoke any FMR currently set at the 50th percentile rent, and for which the current 3-year term for retaining a 50th percentile rent has not expired.

2. Major Provisions—New Provisions or Changes Made at Final Rule Stage

- Conforms the regulations at § 982.505(c)(3) with the portion of section 107 of the Housing Through Opportunity Modernization Act (HOTMA), Public Law 114–201, which provides PHAs with the option to hold families under a Housing Assistance Payments (HAP) contract harmless from payment standard reductions that are currently required at the family's second annual recertification if the family's payment standard falls outside of the basic range as the result of a decrease in FMRs (including a decrease in FMR attributable to the implementation of Small Area FMRs). As an additional protection, the final rule provides that should a PHA choose not to hold the payment standard at its current level for families under HAP contract in an area experiencing a payment standard reduction, the PHA may set the payment standard for families that remain under HAP contract at any amount between the current payment standard and new normally applicable payment standard amount, and may further reduce the payment standard for families under HAP contract over time to gradually bring the family's payment standard down to payment standard that is normally applicable to the area for the PHA's program or reduce the gap between the two payment standards. The rule further extends these same flexibilities to the PHA in cases where the payment standard decrease is not the result of a FMR decrease.

  The rule further provides that if the PHA chooses to apply a reduction in the payment standard to the family's subsidy calculation during the HAP contract term, the earliest the PHA may implement the initial reduction in the payment standard is the second regular reexamination following the effective date of the decrease in the payment standard amount. Section 107 of HOTMA also provides new requirements for publishing HUD's FMRs.
- Additional criteria by which Small Area FMRs will be set.
  - Adds the vacancy rate of an area as a criterion to the selection parameters for Small Area FMRs. The vacancy rate will be calculated in the following manner: Using data from the 1-year American Community Survey (ACS) tabulations, the vacancy rate is the number of Vacant For Rent Units divided by the sum of the number of Vacant For Rent Units, the number of Renter Occupied Units, and the number

of Rented, not occupied units. The vacancy rate will be calculated from the 3 most current ACS 1 year datasets available and average the 3 values. Initially, this threshold will be set at 4 percent, meaning areas designated for Small Area FMRs must have vacancy rates higher than 4 percent.

○ Adds an additional requirement to the voucher concentration ratio included in the proposed rule. In addition to requiring the ratio of the proportion of voucher tenants in concentrated low-income areas (CLIAs) to the proportion of renter occupied units in CLIAs to exceed a minimum threshold (initially 155 percent), the final rule requires that the numerator of the ratio (the proportion of voucher tenants in CLIAs) meet or exceed a minimum threshold. Initially, this threshold will be set at 25 percent.

• Exempts all project-based vouchers from required application of Small Area FMRs but allows a PHA operating under the Small Area FMRs for its tenant-based program to apply Small Area FMRs to future PBV projects (and to current PBV projects provided the owner mutually agrees to the change).

• Provides that a PHA's selection to use Small Area FMRs for PBVs would not require HUD approval but should be undertaken in accordance with guidance issued by HUD and indicated in the PHA's administrative plan.

• Rather than codify both the selection criteria and the selection values in the regulatory text as in the proposed rule, the final rule codifies the selection criteria in the regulatory text, but does not codify the selection values in the regulatory text. The selection values for the first round of Small Area FMR areas is announced in a separate notice published in today's **Federal Register**. The selection values for future designations of Small Area FMR areas will be made available for public comment via **Federal Register** notice before HUD selects additional areas to be designated as Small Area FMR Areas.

• Makes two changes to the exception payment standard requirements in response to public comments:

○ PHAs not operating in Small Area FMR designated areas may establish exception payment standards for a ZIP code area of up to 110 percent of the relevant Small Area FMR by notifying HUD; and

○ The 50 percent population cap (24 CFR 982.503(c)(5)) will not be applicable to Exception Payment Standards in Small Area FMR areas.

• Exempts manufactured home space rental from Small Area FMRs.

• Provides that PHAs have up to three months from the date when the new FMRs go into effect in which to update their payment standards if a change is necessary to fall within the basic range of new FMRs. For example, if the new FMR went into effect on October 1, 2017, the PHA would need to update their payment standard if necessary to fall within the basic range of the new FMRs no later than January 1, 2018.

• Provides HUD may suspend a Small Area FMR designation for a metropolitan area, including at the request of a PHA, where HUD determines such action is warranted based on a documented finding of adverse rental housing market conditions that will be set out by notice (for example, the metropolitan area experiences a significant loss of housing units as a result of a natural disaster).

• Provides that HUD may provide an exception payment standard for a PHA administering the HCV program under Small Area FMRs for an entire ZIP Code area in accordance with the conditions and procedures provided by notice in the **Federal Register**. The requirements at § 982.503(c) do not apply to these exception payment standard requests.

C. Costs and Benefits

The main benefit of the final rule is that, through setting rental subsidy amounts at a more local level, assisted households will be more able to afford homes in areas of high opportunity than under current policy. Such moves are expected to benefit both individual households, for example, through access to better schools or safer neighborhoods, and areas as a whole through reducing concentrated neighborhood poverty. Other benefits could arise through the reduction of overpayment of rent in areas where the neighborhood rent is below the metropolitan average. Early evidence from current Small Area FMR locations suggests that there could be per-voucher cost decreases relative to 50th percentile rents, depending on the choices made by tenants. Evidence also suggests that families moved to better neighborhoods with higher rents, although not greatly in excess of the metropolitan FMR, which resulted in no overall program cost increases.[1] Finally, the final rule eliminates the year to year volatility of some areas changing to and from 50th percentile FMRs.

Potential costs of the final rule include the administrative expenses associated with implementation on the part of PHAs. Additionally, if there are barriers to households moving to areas of higher opportunity beyond housing costs, such as transportation expenses or social factors, assisted households might be worse off if they can no longer afford their current units in their neighborhoods. This may be particularly true for elderly families or families with a disabled member; however, HUD regulations allow PHAs wide latitude in setting payments standards for disabled tenants as ''reasonable accommodations'' of their disabilities. Finally, if the long-term impacts of the final rule cause per-voucher costs to rise, fewer households would receive assistance without an overall increase in program funds.

II. Background

The Housing Choice Voucher Program and Fair Market Rents

HUD's HCV program helps low-income households obtain standard rental housing and reduces the share of their income that goes toward rent. Vouchers issued under the HCV program provide subsidies that allow individuals and families to rent eligible units in the private market. A key parameter in operating the HCV program is the FMR. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet rent reasonableness standards. Rent reasonableness is determined by PHAs with reference to rents for comparable unassisted units.

In the HCV program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for a voucher household (see § 982.503). PHAs may establish payment standards between 90 and 110 percent of the FMR.[2] HCV program households receive a housing assistance payment equal to the difference between the lower of the gross rent of the unit or the payment standard established by the PHAs and the family's Total Tenant Payment (TTP), which is generally 30 percent of the household's adjusted monthly income. Participants in the voucher program can choose to live in units with gross rents higher than the payment standard, but would be required to pay the full cost of the difference between the gross rent and the payment standard, in addition to their TTP.

[1] Please see Collinson and Ganong, ''The Incidence of Housing Voucher Generosity'', available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799*.

[2] Moving to Work (MTW) agencies have the authority to waive § 982.503 and can propose, for HUD approval, alternate rent policies in their Annual MTW Plan.

Please note that at initial occupancy the family's share cannot exceed 40 percent of adjusted monthly income.

HUD establishes FMRs for different geographic areas. Because payment standards are based on FMRs, housing assistance payments on behalf of the voucher household are limited by the geographic area in which the voucher household resides. HUD calculates FMRs for all nonmetropolitan counties and metropolitan areas. To date, the same FMR is applicable throughout a nonmetropolitan county or metropolitan area, which generally is comprised of several metropolitan counties. FMRs in a metropolitan area (Metropolitan FMR) represent the 40th percentile (or in special circumstances the 50th percentile) gross rent for typical non-luxury, non-substandard rental units occupied by recent movers in a local housing market.[3]

As noted earlier, HUD regulations have allowed a PHA to set a payment standard between 90 percent and 110 percent (inclusive) of the FMR. PHAs may determine that payment standards that are higher than 110 percent, or lower than 90 percent, are appropriate for subareas of their market; in this instance, a PHA would request HUD approval for a payment standard below 90 percent or an exception payment standard above 110 percent. The total population of a HUD-approved exception payment area (*i.e.,* an area covered by a payment standard that exceeds 110 percent of the FMR) may not include more than 50 percent of the population of the FMR area (see § 982.503).

On October 2, 2000, at 65 FR 58870, HUD published a rule (2000 rule) establishing policy, currently in HUD's codified regulations, to set FMRs at the 50th percentile for ''areas where higher FMRs are needed to help families, assisted under HUD's program as well as other HUD programs, find and lease decent and affordable housing.'' This policy was put in place to achieve two program objectives: (1) Increase the ability of low-income families to find and lease decent and affordable housing; and (2) provide low-income families with access to a broad range of housing opportunities throughout a metropolitan area. The policy further provides that PHAs that had been authorized to use FMRs set at the 50th percentile rent may later be required to use FMRs set at the 40th percentile rent. This would occur if the FMR were set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area for three years, but the concentration of voucher holders in the metropolitan area did not lessen.

Since HUD established the 50th percentile FMRs 16 years ago, research has emerged [4] that indicates that 50th percentile FMRs are not an effective tool in increasing HCV tenant moves from areas of low opportunity to higher opportunity areas. Specifically, it appears that much of the benefit of increased FMRs simply accrues to landlords in lower rent submarket areas in the form of higher rents rather than creating an incentive for tenants to move to units in communities with more and/or better opportunities. As provided in HUD's currently codified regulation, to determine the 50th percentile program's effectiveness, HUD must measure the reduction in concentration of HCV tenants (objective 2 above) presumably from high poverty areas, over a 3-year period. If there is no measurable reduction in the concentration of HCV tenants, the FMR area loses the 50th percentile FMRs for a 3-year period. A large number of areas have been disqualified from the 50th percentile program for failure to show measurable reduction in voucher concentration of HCV tenants since 2001 when the program started, which strongly suggests that the deconcentration objective is not being met.[5]

History of Small Area FMRs

Since the establishment of the 50th percentile program, HUD has developed Small Area FMRs to reflect rents in ZIP code based areas with a goal to improve HCV tenant outcomes. Small Area FMRs have been shown to be a more direct approach to encouraging tenant moves to housing in lower poverty areas by increasing the subsidy available in specific ZIP codes to support such moves.[6] Since 2010, when the United States Census Bureau made available data collected over the first 5 years of the American Community Survey (ACS), HUD has considered various methodologies that would set FMRs at a more granular level. HUD's goal in pursuing the Small Area FMR methodology is to create more effective means for HCV tenants to move into higher opportunity, lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

Toward this end, through a **Federal Register** notice published on May 18, 2010, at 75 FR 27808, HUD announced that in Fiscal Year (FY) 2011 it would seek to conduct a Small Area FMR demonstration project to determine the effectiveness of FMRs which are published using U.S. Postal Service ZIP codes as FMR areas within metropolitan areas. HUD also solicited public comment on the proposed demonstration. On November 20, 2012, at 77 FR 69651, HUD announced the commencement of the Small Area FMR Demonstration, for which advance notice was provided on May 18, 2010, and further announced the participation of the following PHAs: The Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga (TN) Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Housing Authority of Laredo (TX).

Through a second **Federal Register** notice published on August 4, 2010, at 75 FR 46958, HUD mandated the use of Small Area FMRs in place of metropolitan-area-wide-FMRs to settle litigation in the Dallas, TX, HUD Metro FMR Area. Small Area FMRs have been in operation in Dallas, Texas, as part of a court settlement since 2010, and in a small number of PHAs since 2012.

HUD Proposals To Move to Small Area FMRs

On June 2, 2015, at 80 FR 31332, HUD published an advance notice of proposed rulemaking (ANPR) entitled ''Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (Small Area FMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs.'' In this ANPR, HUD announced its intention to amend HUD's FMR regulations applicable to the HCV program to provide HCV tenants with subsidies that better reflect the localized rental market, including subsidies that would be relatively higher if they move into areas that potentially have better access to jobs, transportation, services, and educational opportunities. The ANPR sought public

[3] General information concerning FMRs including more detailed information about their calculation is available at *https://www.huduser.gov/portal/datasets/fmr.html.*

[4] From 2000 to 2010, however, voucher concentration *rose* in the largest metro areas, even though most of those areas used 50th percentile FMRs for at least part of that period. Kirk McClure, Alex F. Schwartz, and Lydia B. Taghavi, ''Housing Choice Voucher Location Patterns a Decade Later,'' November, 2012, p 7. In 2010, 24 percent of vouchers in the 50 largest areas were used in tracts where at least 10 percent of households used vouchers, compared to 16 percent in 2000, p 7.

[5] Areas may subsequently requalify for 50th percentile status after a 3-year period.

[6] Please see Collinson and Ganong, ''The Incidence of Housing Voucher Generosity'', available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.*

comment on the use of Small Area FMRs for the HCV program within certain metropolitan areas. HUD received 78 public comments in response to the ANPR.

On June 16, 2016, at 81 FR 39218, HUD published a proposed rule that require the use of Small Area FMRs in place of the 50th percentile rent to address high levels of voucher concentration. The proposed rule addressed the issues and suggestions raised by public commenters on the ANPR. (See 81 FR 39222 through 39224.) In addition to responding to public comments on the ANPR, HUD specifically requested comment on certain issues. (See 81 FR 39224 through 39226.) HUD received 113 comments on its June 16, 2016, proposed rule. The public comments can be found at *https://www.regulations.gov/docket?D=HUD-2016-0063.*

The significant issues raised by the public commenters and HUD's responses are provided in the following section of this preamble.

III. Discussion of Public Comments and HUD's Responses

General Comments

Commenters were divided in their support for the rule. For those commenters that supported the rule they stated that this new methodology was long overdue because the current system was not working. Commenters stated that the current system was not working and HUD's proposal sounded like a good solution. Commenters stated that creating a system where cities, counties and municipalities could have a finer laser point on their rental markets could increase subsidy utilization rates and customer choice. The commenters stated that they highly recommended not only looking at the proposed methodologies but also collecting and refining more data from cities on their housing stock and availability. A commenter stated that setting FMRs for smaller areas is an ingenious solution because it will put an end to unnecessarily high subsidies in high poverty areas, and will gradually erode the legacy of segregation by giving HCV households more access to low-poverty neighborhoods. Another commenter stated that this FMR change is a welcome innovative step toward increasing housing choices for low-income individuals and families. Other commenters stated that the goal of the Small Area FMR rule will benefit people with disabilities by affording them better opportunities for integration into the community.

For those commenters that opposed the rule they offered the following concerns. A commenter stated HUD's proposal would result in Section 8 recipients in designated ZIP codes experiencing decreases in their subsidies, and these recipients would be obliged to increase their out-of-pocket share. Other commenters stated that research indicates low poverty rates are not 100 percent indicative of high opportunity areas. The commenters stated that given this information, Small Area FMRs are not an indicator of areas of opportunity and cannot be substituted for more robust mobility efforts resulting in poverty deconcentration, racial/ethnic deconcentration, and other positive outcomes associated with areas of opportunity. Other commenters similarly stated that voucher holders access to opportunity/higher market neighborhoods is only partially impacted by adequate payment standards. The commenters stated that while higher payment standards are essential this is not a solution to moving low-income families with children into opportunity neighborhoods. Commenters stated that HUD should not implement Small Area FMRs unless HUD revises the HCV funding formula to ensure that implementation of the rule does not result in fewer households being subsidized under the voucher program.

The following presents the specific issues that commenters raised on the proposed rule and HUD's responses.

Specific Comments

In the proposed rule, HUD sought comment on 13 specific areas presented below.

1. Should HUD provide for PBVs that are in the pipeline to continue using metropolitan FMRs even if the area is designated as a Small Area FMR area? Additionally, should HUD require newly proposed PBVs post Small Area FMR designation to use Small Area FMRs?

Comment: In response to the question of whether PBVs in the pipeline in a designated area, and newly proposed PBVs post-designation, should use Small Area FMRs, commenters expressed wide-ranging views. Many stated that applying Small Area FMRs to existing PBV projects or those in the pipeline could destabilize deals (*e.g.,* impact their value for LIHTC allocation, etc.). Some commenters indicated Small Area FMRs would assist in placing PBV units in high opportunity areas and reduce incentives to develop units in high-poverty areas. Other commenters stated Small Area FMRs would not be high enough to achieve the goal of creating units in high opportunity areas. Some suggested Small Area FMRs should not apply to PBVs at all because PBVs are essential to revitalization and preservation strategies. In summary, commenters offered differing views: Some recommend PBVs be excluded entirely (with or without an opt-in provision); some recommend voluntary adoption for new or pipeline projects, and others advocate application to all new projects to encourage placement of PBVs in high opportunity areas. One commenter requested HUD remove the word ''jurisdiction'' in proposed § 888.113(h), to clarify that the new Small Area FMRs apply in any zip code where a PHA's voucher is placed in the metropolitan area.

HUD Response: HUD appreciates that PBVs relationship to FMRs is different than tenant-based vouchers; for example, PBVs are often used for preservation in low-income neighborhoods where the Small Area FMR would be lower than current FMRs—however, Small Area FMRs that are higher than current FMRs could help PBVs reach high opportunity neighborhoods. In the context of HUD's Rental Assistance Demonstration (RAD), the use of Small Area FMRs for PBV may limit PHA options in terms of deciding whether PBV or PBRA is the appropriate choice for the RAD conversion.

Given the range and variation among public comments, and the range of uses of PBV within HUD's rental assistance programs, HUD is choosing to exempt all current and future PBVs from Small Area FMRs at this time. However, if a PHA is operating its tenant-based program under the Small Area FMRs, the PHA may apply Small Area FMRs to all future PBV projects if it establishes such a policy in its PHA administrative plan. In such a case, the PHA may also choose to also establish a policy that allows the PHA to apply the Small Area FMRs to current PBV projects, provided the owner is willing to mutually agree to do so. The application of the Small Area FMR to the PBV project must be prospective. The PHA and the PBV project owner operating under the Small Area FMRs may not subsequently choose to revert back to the metropolitan-wide FMR, regardless of whether the PHA subsequently changes its administrative policy to no longer apply Small Area FMRs to PBV projects. HUD believes this approach offers maximum flexibility for varied circumstances and HUD will closely monitor the results of the policy including for any fair housing or civil rights concerns.

HUD is also removing the term ''jurisdiction'' in § 888.113(h) for consistency since HUD provides approval to a ''PHA'' that requests to voluntarily use Small Area FMRs under 982.113(c) as opposed to a ''PHA jurisdiction''.

2. The proposed rule provides for Small Area FMR area selection parameters to be codified in regulatory text. HUD is seeking comment on whether these parameters should be codified or should be incorporated into each annual proposed FMR notice to provide HUD, PHAs, and other stakeholders with flexibility, in any given fiscal year, to offer changes to these selection parameters and have the opportunity to comment before any changes to the parameters are made.

Comment: Some commenters proposed codifying area selection criteria with limited flexibility in the specific parameter values for reach (percentages, populations). They recommended HUD should codify the criteria for selecting Small Area FMR areas but the final regulations should allow HUD to revise the Small Area FMR criteria if necessary, through notice and opportunity for public comment, in the **Federal Register**. Commenters suggested this would be the way to ensure changes are guaranteed to fall under the informal administrative rulemaking process. However, other commenters preferred incorporating the parameters into the annual notice as a way to allow for comments and perhaps changes before final Small Area FMRs are issued for that year—enabling potential flexibility for changes on an annual basis. Commenters indicate that HUD should make clear whether Small Area FMRs designations are permanent.

HUD Response: In order to provide specificity to FMR users, and flexibility to HUD, the final rule codifies the definitions of selection parameters in regulatory text but will not include the specific values for these selection criteria in the regulatory text. The values of the selection parameters for the first round of Small Area FMR area selections are specified in a separate **Federal Register** notice published today. The values of selection parameters for subsequent Small Area FMR Area designations, which will be made every 5 years, will be specified through **Federal Register** notice with opportunity for public comment as new Small Area FMR designations are made. Further, once an area is selected to use Small Area FMRs, the selection is permanent. In future years, HUD intends to make additional selections based on updated information and different selection parameter values.

3. Several commenters to HUD's ANPR suggested that HUD provide for tenant rent protections in ZIP codes where the Small Area FMR is below the metropolitan area and tenants choose not to move. No additional tenant protections were instituted for tenants serviced by PHAs accepting HUD's invitation to participate in the Small Area FMR demonstration nor were additional tenant protections implemented for tenants living in the Dallas, TX HUD Metropolitan Area when Small Area FMRs were implemented there. However, as part of a transition strategy between Metropolitan FMRs and Small Area FMRs, HUD seeks comment on what additional policies or requirements the final rule should include that would mitigate the impact of significant and abrupt decreases in the FMRs for certain ZIP code areas on families currently under HAP contract in those impacted areas.

Comment: Commenters suggested a range of additional policies or requirements that would mitigate the impact of significant or abrupt decreases in the FMR for families currently in those areas. Many requested that HUD hold all current tenants harmless permanently if they remain in their same unit (or, as some suggested, neighborhood); others suggested until tenants move or remain for more than 5 years; and others still suggested hold harmless should only apply to certain populations. Commenters urged HUD to fund support mechanisms for impacted households, such as mobility counseling, training and guidance on reasonable accommodation procedures, and others. Some commenters stated that no additional protections were necessary. In addition, commenters also raised concerns about specific populations, exception payment standards, phasing in of payment standard reductions, and incorporation of vacancy rates; those comments are handled elsewhere in the response to comments within this preamble as other questions more directly focus on that content.

HUD Response: Based on the comments received, HUD agrees that it is important to protect tenants, and therefore, the following changes have been incorporated within this final rule. The final rule makes conforming regulatory changes in accordance with Section 107 of HOTMA, which provides PHAs with the option to establish an administrative policy that would hold harmless those families remaining in place from payment standard reductions that are currently required at the family's second annual recertification if the family's payment standard falls outside of the basic range as the result of a decrease in FMRs (including a decrease in FMR attributable to the implementation of Small Area FMRs). This will be done without requiring individual exception payment standard requests.

In addition, the final rule provides PHAs with the option to establish a new payment standard for families under HAP contract between the full ''hold harmless'' option provided under HOTMA and the new payment standard based on the Small Area FMR. Under this option, the PHA would have greater flexibility than what is afforded under HOTMA (which essentially requires the PHA to either hold the in-place families completely harmless or transition them to the new payment standard). This policy would allow the PHA to still achieve some budgetary flexibility by reducing the payment standard for families under HAP at the second reexamination, while ensuring the reduction in subsidy is modest and does not place families at risk of displacement.

The rule further extends these same flexibilities to the PHA if the payment standard decrease is not the result of a decrease in the FMR.

Finally, in order to ensure that a suitable amount of units remain available during the transition to Small Area FMRs, this final rule limits the annual decrease in Small Area FMRs to no more than 10 percent of the area's FMR in the prior fiscal year. That is, the current FMR may be no less than 90 percent of the area's FMR in the previous fiscal year. In addition, the final rule provides that HUD may approve exception payment standards for PHAs administering their HCV programs under Small Area FMRs for an individual ZIP code area in accordance with conditions and procedures set forth in a separate **Federal Register** notice as opposed to the normally applicable requirements at 982.503(c).

4. Related to question 3, HUD seeks comment on whether the final rule should limit the potential decline in the FMR for a ZIP code area resulting from the implementation of Small Area FMRs in order to ensure that sufficient housing opportunities remain available to voucher holders? If so, HUD seeks recommendations on specific policies or requirements that should be included in the final rule to achieve the desired outcome.

a. For example, an approach would be to allow the PHA to establish exception payment standards above the basic

range for impacted ZIP code areas meeting certain conditions through a streamlined HUD approval process. One example of this may be that PHAs could have the discretion of setting their payment standards at up to 130 percent of the Small Area FMR in the 1st year of transition, at up to 120 percent of the Small Area FMR in the 2nd year of transition, and at up to 110 percent of the Small Area FMR in the 3rd and subsequent years following implementation.

b. With respect to protections for tenants currently under HAP contract, one possibility may be to increase the amount of time that the family is held harmless from a decrease in the payment standard. For instance, instead of the lower payment standard going into effect on the second reexamination following the effective date of the decrease in the payment standard, the final rule could provide that the lower payment standard would not go into effect for a family under HAP contract until a later re-examination (*e.g.,* third, fourth, or fifth reexamination).

Comment: Many commenters urged HUD to provide flexibility for PHAs to set rent levels and to protect tenants served by PHAs that do not choose to hold tenants harmless as allowed under HOTMA. Commenters urged HUD to implement the provision in HOTMA that gives PHAs the discretion to hold harmless decreases in Small Area FMRs and FMRs for current tenants. Others suggested PHA-administered phase-ins and increased timeframes before decreases are required are not necessarily helpful, as such phase-ins and timeframes add to administrative tracking requirements and increase program audit risks for the administering agency, as well as cause confusion for residents and landlords.

Regarding the proposal in which PHAs could have exception payment standards above the basic range, some commenters embraced the proposal; however, others felt it would not go far enough, and only delay the onset of rent burdens. Compared to a Small Area FMR phase-in, some commenters suggested it would protect fewer families since it is likely that only some PHAs would implement the higher payment standards. Other commenters suggested HUD could permit PHAs to set payment standards for eligible voucher holders that fall anywhere between the Small Area FMR and the metro-level FMR. Commenters also suggested that HUD limit the amount the FMR or payment standard could fall below metropolitan FMRs each year. Suggestions offered by the commenters ranged from suggesting Small Area FMRs be set no lower than 90–95 percent of the metropolitan FMR, no lower than 80–90 percent the second year, and so on in 5 percent or 10 percent increments.

Some commenters supported limiting annual FMR reductions by 3 percent or 5 percent, while others suggested the decreases should occur over a 5-year instead of a 3-year period (for all areas, or for only those areas that decrease by more than 10 percent), or the total drop be no more than 5 percent. Other commenters suggested changes included removing or increasing the cap on Small Area FMR values.

Regarding the proposal to increase the amount of time that the family is held harmless from a decrease in the payment standard, some commenters suggested HUD hold the rent harmless until at least the fifth reexamination following implementation of Small Area FMRs. Other commenters stated that if HUD implements the HOTMA payment standard provision, there would be no need to implement a hold harmless provision that holds payment standards harmless in the third, fourth, or fifth reexamination.

HUD Response: As noted above, the final rule implements a number of tenant protection policies: First, the final rule conforms the regulation in accordance with Section 107 of HOTMA, which provides PHAs with the option to maintain an in-place family's current payment standard at a level above a payment standard at the top of the basic range of the a new, lower FMR. Second, the final rule further provides PHAs with the option to establish a new payment standard for families under the HAP contract between the full ''hold harmless'' option provided under HOTMA and a payment standard based on the basic range of the new lower Small Area FMR. It is noted that the rule also extends these same flexibilities to the PHA in cases where the payment standard decrease is not a result of a decrease in the FMR.

The rule maintains that in cases where the PHA will apply a decrease in the payment standard to families during the term of the HAP contract, the earliest that the PHA may apply the initial reduction to the payment standard amount is the second regular reexamination following the effective date of the change in the payment standard amount. This provides at minimum a family with no less than the amount of time previously provided under the regulations before a reduction in the payment standard may take effect during the term of the family's HAP contract. The final rule also provides the PHA with the administrative flexibility to further reduce the payment standard for the families that remain under HAP contract if the PHA wishes to gradually reduce or eliminate the difference between the family's payment standard and the normally applicable payment standard on the PHA's payment standard schedule over time.

HUD notes that section 78001 of the Fixing America's Surface Transportation Act (or FAST Act), amended the 1937 Act to allow PHAs to undertake full income reexaminations for families with 90 percent or more of their income from fixed-income sources every three years instead of annually. HUD recognizes that implementation of this change in the frequency of reexaminations may have significant ramifications in terms of when a decrease in a payment standard could take effect during the term of the HAP contract for some families given that under this rule the decrease may not take effect until the second regulation reexamination. Rather than try to incorporate changes to the tenant protection provisions of this rule in anticipation of those potential complications, HUD will instead consider if any changes are necessary as part of the forthcoming rule-making for implementation of those FAST Act provisions.

The final rule further provides that the PHA may establish different policies regarding how decreases in payment standards will apply during the term of the HAP contract for designated areas within their jurisdiction (*e.g.,* for different zip code areas). However, the PHA must apply the same policies to all families under HAP contract within that designated area.

Fourth, controlling for extremely large decreases in FMRs, the final rule protects families, by limiting the maximum amount the FMR may decrease year over year to 10 percent of the prior year's FMR for the area. This protection applies to all tenants—families under HAP contract, current participants that either want or are required to move to new units, and families from the waiting list who are issued vouchers to begin their initial housing search, and to metropolitan and non-metropolitan county FMRs.

Fifth, the final rule permits a PHA that is administering its HCV program under the Small Area FMRs to request and HUD to approve exception payment standards for a ZIP Code Area under the conditions and procedures set forth in a **Federal Register** Notice instead of the requirements under 982.503(c). This will allow HUD to establish a process by which a PHA may request and receive approval to establish an exception payment standard promptly for a ZIP

Code area if necessary to react to rapidly changing market conditions or to ensure sufficient rental units are available for voucher families.

5. The proposed rule adds a new paragraph (i) to § 888.113 to address the transition of metropolitan areas that were previously subject to 50th percentile FMRs. HUD believes that the Small Area FMR methodology will provide HCV tenants with greater access to areas of opportunity than metropolitan area wide 50th percentile FMRs. As a result, this rule proposes that a 50th percentile metropolitan area designated for Small Area FMRs would transition to Small Area FMRs on the effective date of the Small Area FMR designation. HUD is also proposing that a 50th percentile FMR area that is not designated for Small Area FMRs would remain under 50th percentile FMRs until the end of the existing 3-year period for the 50th percentile FMRs prior to reverting to the standard 40th percentile FMRs. The rule does not eliminate provisions that permit a PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR to request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with the existing § 982.503(f); however, HUD is specifically seeking comment on whether this provision should be eliminated in order to phase out the use of 50th percentile rents for deconcentration purposes. HUD would also appreciate comments as to whether or not the current SEMAP deconcentration standard is appropriate as the basis for PHAs requesting HUD to approve payment standards based on 50th percentile rents under existing § 982.503(f). HUD is specifically seeking comment on these proposed polices, as well as suggestions for alternative approaches or other recommendations on how best to phase-out 50th percentile rent FMRs for impacted metropolitan areas and transition the area to either the Small Area FMRs or the standard metropolitan-wide 40th percentile FMRs.

Comment: Commenters responses to this issue varied. Some commenters requested continuation of the 50th percentile policy in its entirely (including expanding it so that all FMRs would be set at the 50th percentile). Other commenters recommended it be optional if areas proved successful deconcentration using it, and others recommended phasing out 50th percentile rents altogether. Some commenters responded that the SEMAP standard should be considered an appropriate basis for PHAs to request payment standards based on the 50th percentile until such time as the Section Eight Management Assessment Program (SEMAP) provision for deconcentration is modified. Others commented that if HUD allows agencies that earn the SEMAP deconcentration bonus to retain 50th percentile FMRs, it should also require such agencies to demonstrate that retaining 50th percentile FMRs would be more effective in enabling voucher holders to live in high-opportunity areas than adopting Small Area FMRs. and others still indicated that before determining this, HUD should clarify proposed mobility factors of SEMAP reform.

HUD Response: It is impractical to maintain both 50th percentile FMRs and Small Area FMRs as the FMR tools that HUD provides to help deconcentrate voucher tenants in metropolitan areas. However, HUD recognizes that some PHAs have attained deconcentration success using 50th percentile FMRs. Therefore, as in the proposed rule, the final rule provides that current 50th percentile areas that are designated for Small Area FMR usage will transition to using Small Area FMRs when Small Area FMRs become effective and areas not designated for Small Area FMR usage will remain 50th percentile areas until the end of their 3-year designated period and then will revert to 40th percentile areas. PHAs operating in 50th percentile areas that do not convert to Small Area FMR areas and do not choose to opt-in to using Small Area FMRs may follow the procedures available at 24 CFR 982.503(f) to apply to continue to use payment standards based on 50th percentile rents.

6. HUD is specifically seeking comment on how to reduce the administrative burden on PHAs and simplify the transition to Small Area FMRs. For example, HUD is proposing to change the percentage decrease in FMRs that triggers rent reasonableness redeterminations from 5 percent to 10 percent for Small Area FMR PHAs. HUD requests comments, however, regarding whether 10 percent is the right trigger for program-wide rent reasonableness redetermination, whether HUD should limit this proposal to Small Area FMR decreases, or also change the percentage of decrease that triggers rent reasonableness for all FMRs, and whether it should revise the trigger for program-wide rent reasonableness redeterminations at all. In regards to potentially expanding the 10 percent trigger for rent reasonableness redetermination to a program-wide requirement, HUD seeks comments on the trade-offs between administrative relief and decreased program oversight on rent levels. HUD also requests comments on what other changes would reduce the potential administrative burden and complexity for PHAs impacted by the implementation of Small Area FMRs.

Comment: Commenters emphasized that that Small Area FMRs and other recent programmatic changes represent increased administrative burden. Many commenters supported increasing the threshold at which an FMR decline triggers a rent reasonableness redetermination from 5 percent to 10 percent as a way to reduce that burden. However, others recommended changing the trigger from 5 percent to 35 percent and allowing the PHA to make that change through their annual plan process. Some commenters opposed changing the standard altogether. Other commenters stated that they do not believe a change from 5 percent to 10 percent is enough to reduce administrative burden sufficiently given the number of rent redeterminations expected from the transition to Small Area FMRs.

Aside from whether and at what level to change the trigger, some commenters recommended this be program-wide, and not just for Small Area FMRs. Commenters urged HUD to issue updated rent reasonableness guidance—including for high opportunity neighborhoods to avoid methods disallowing rents if the methods do not adequately consider location. Commenters also urged HUD to require PHAs to be transparent with the data used to perform the analysis and make it publicly available.

Other commenters urged HUD to publish new FMRs and Small Area FMRs far in advance of their effective date to avoid requiring PHAs to redo redeterminations. Commenters asked HUD to provide at least six months after publication of Small Area FMR designations before they are required to have Small Area FMR-based payment standards in place.

Some commenters raised concerns about increasing the trigger for PBV because it would trigger rent reasonable studies that result in a significant loss of income to owners of PBV contracts. The commenters stated that for properties in which this income was assumed as part of initial financing or refinancing, the property is likely to become financially unstable and unable to meet its obligations. Other commenters stated that aside from rent reasonableness, the increased administrative costs of administering Small Area FMRs come at a time when PHAs are not being paid fully to administer the HCV program.

HUD Response: Based on public comment, HUD agrees that a reduction in administrative burden is necessary. Therefore, HUD is adopting the proposed rule provisions which change the required rent reasonableness review standard from a 5 percent to a 10 percent decrease in the FMR. This change would apply not just to voucher units in Small Area FMR areas but to units in all FMR areas. Moreover, the final rule implements a policy that limits the annual decrease in FMRs (including Small Area FMRs). This change is being implemented in response to comments on the need for additional tenant protections, but should also provide some administrative relief to PHAs by having more certainty around the path of Small Area FMRs within areas where the Small Area FMR is below the metropolitan FMR as well as FMR decreases more generally.

7. HUD is currently proposing, through this rulemaking, to expand the use of Small Area FMRs within the HCV program. HUD seeks public comment as to whether or not other HUD rental assistance programs would benefit from using Small Area FMRs in their operations. For example, would the rental assistance component of the Housing Opportunities for Persons with AIDS (HOPWA) programs be a candidate for Small Area FMR treatment? Frequently, metropolitan FMRs are inadequate for HOPWA-assisted tenants to find units near health care facilities, or in neighborhoods with better job opportunities. Should the HOPWA program regulations be amended to allow participating jurisdictions the flexibility to set tenant-based assistance rents according to Small Area FMRs either in areas that would be designated Small Area FMR areas or for the HOPWA program more generally? Would other HUD programs benefit as well?

Comment: Commenters responses to this issue were varied. Some commenters were against expansion to any other program, and some urged HUD to wait until Small Area FMRs could be studied more fully. Other commenters stated that they believed new tenants in tenant-based rental assistance programs could benefit from Small Area FMRs (*e.g.,* HOPWA, CoC Rental Assistance, Legacy Shelter Plus Care program, HOME tenant-based rental assistance,). The commenters that recommended expansion to other programs stated that applying the same Small Area FMR scheme would be less burdensome on PHAs and landlords than multiple standards.

HUD Response: HUD appreciates the suggestions, but at this time, due the myriad of programs and program rules, it is beyond the scope of this rulemaking to make changes to these programs; therefore, HUD is proceeding solely with implementation of Small Area FMRs for the HCV program, which includes traditional vouchers and special purpose vouchers. HUD will consider the comments received for future rulemaking or other program implementation strategies for the various programs as the opportunity arises.

8. As currently proposed, the Small Area FMR policy would apply to all residents within a ZIP code who receive housing vouchers. HUD seeks comment on whether there are certain situations or any specific groups of voucher recipients within the general population, such as persons with disabilities or elderly voucher recipients, where an alternate policy should apply that should exempt them from having their voucher level change as a result of this policy due to specific hardships they may encounter by having to choose between staying in their current area and receiving a smaller voucher or moving to a new area for the sake of obtaining a larger voucher?

Comment: Many commenters urged HUD to hold all existing tenants harmless, and if HUD declined to do this, to hold disabled and elderly tenants harmless.

HUD Response: In response to the commenters request that HUD hold disabled and elderly tenants harmless under this policy, HUD is prohibited from treating one or more protected class differently under the Fair Housing Act and other civil rights requirements, absent statutory authority. HUD in this rule is implementing robust tenant protections for all tenants, including those enacted in HOTMA, as outlined earlier in this preamble. HUD will study the specific impact on elderly and disabled voucher recipients as a result of this rule change to determine if additional policy changes are necessary.

9. Are there specific groups within the general population of voucher holders for whom this policy change would be particularly burdensome? What are the ways in which this policy change could create a disproportionate burden on certain groups like elderly and disabled voucher holders?

Comment: Commenters stated that there are specific groups of voucher holders for whom this policy change would be particularly burdensome. The commenters stated that these specific groups include the elderly, people with disabilities, and families with children. Commenters raised the concern that each group could face increased housing cost burdens, displacement, prohibitively expensive moves, and homelessness. Other commenters raised the concern that all tenants may have chosen their current location based on community, religious, medical, service provider, and social networks.

Specifically, certain commenters stated that tenants with disabilities may not be able to find accessible units in higher rent neighborhoods and may face limited public transportation options. They may also face discrimination in these areas. Commenters stated that it is insufficient to suggest that these tenants are not at risk because they can request reasonable accommodation. The commenters stated that many people do not know enough about their rights to request the accommodation and will not be informed of them by landlords seeking higher payments. The commenters further stated that responding to requests for accommodations from a significant portion of voucher holders may be administratively burdensome for HUD. Specific recommendations from commenters focused exception payment standards (EPS) in which HUD should (1) notify all tenants who will experience a reduced payment standard of their right to a reasonable accommodation based on disability, (2) identify tenants, based on their participant file, who might be entitled to an EPS based on disability and take affirmative steps to accommodate them, and (3) publish additional guidance with the final rule that directs PHAs to allow EPS as a reasonable accommodation in any instance when a voucher family will experience a disability-related hardship as a result of being forced to pay over 30 percent of their income in rent or move.

Commenters stated that elderly tenants may also share similar challenges finding accessible units, and that stability in a neighborhood may be more of an opportunity than mobility. Commenters also suggested families with children may be adversely impacted, as having a large number of children can act as a barrier to being able to find suitable housing. Commenters stated that families report longer search times and far fewer options.

HUD Response: HUD agrees that the concerns raised by the commenters pose serious challenges for the specific populations raised above. As such, the final rule implements robust tenant protections for all tenants and a lengthened transition to full Small Area

FMR implementation as outlined earlier in this preamble. In addition, the final rule clarifies that reasonable accommodation requests may include exception payment standards of more than 120 percent of the published FMR, consistent with HOTMA. Consistent with current practice, for such requests, the focus of HUD's review will be on the exception payment standard requested by the PHA.

10. HUD is seeking comment on the criteria that HUD selected for determining which metropolitan areas should be impacted by the shift to a Small Area FMR instead of the current 50th percentile policy. Did HUD use the correct criteria in making these choices? What other criteria should HUD be using to select metropolitan areas that will be impacted by this rule change and why are those criteria important?

Comment: Commenters provided a range of responses on many topics, outlined below:

- Vacancy: Many commenters urged HUD to factor in vacancy data into the formula. Their recommendations included:
  - Excluding low vacancy markets (those with a 4 percent, 5 percent or 6 percent vacancy rates).
  - Allow PHAs with low vacancy rates to opt out of Small Area FMRs, even if they meet HUD's criteria, and require PHAs with low vacancy rates that choose to adopt Small Area FMRs to hold current tenants harmless.
  - Exempt low vacancy areas from decreases in authorized Section 8 rent levels for existing tenants; Small Area FMRs should be implemented only for new tenants (or existing tenants who move) in these areas.
- Revising the formula
  - Considering relative voucher concentration by measuring the difference—rather than the ratio—between the voucher and renter concentration shares. HUD should use the criteria that there must be at least a 15 percent difference between renter and voucher holder concentration in low-income areas.
  - Compare voucher concentration to the distribution of all housing units rather than just rental units.
  - Reduce the required proportion of rental units in areas over 110 percent of the regional FMR to 17 percent, to capture more of our most deeply segregated metro areas. An alternative approach would prioritize metropolitan areas with the highest proportion of families with young children living in concentrated poverty neighborhoods.
  - Lower this threshold for the share of rental units in ZIP codes with Small Area FMRs above 110 percent of the metro FMR at least to 15 percent.
  - Change criterion to better target metropolitan areas in which overall segregation is the highest, with less focus on concentration of voucher households in high poverty areas relative to other renters.
- Exclusions and other comments
  - Commenters also suggested that, in order not to impede PHAs whose program management has already resulted in participants living in higher opportunity/lower poverty areas, HUD should require adoption of Small Area FMRs only by those PHAs in Metro areas meeting the Small Area FMR designation criteria whose percentage of voucher holders living in concentrated low-income areas relative to all renters in concentrated low-income areas over the entire Metro FMR area exceeds 155 percent.
  - The use of Qualified Census Tracts (QCTs) in the criteria for designating Small Area FMR areas is inappropriate. In the LIHTC program, the purpose of QCTs is to increase the supply of affordable housing in these areas. It is contradictory to incentivize the construction of affordable rental units in certain areas on the one hand, and use Small Area FMRs to move residents out of those areas on the other.
  - In addition to modifying the criteria, HUD should also revise the proposed regulation to give itself flexibility to designate highly segregated areas as Small Area FMR areas if it concludes that this is needed to further fair housing.

HUD Response: While SAFMRs may be a useful tool for expanding choice and providing voucher holders with access to more units in opportunity areas, public comments on the proposed rule raised concerns with HUD's knowledge of how well SAFMRs will work in areas experiencing low vacancy rates. HUD agrees that areas with extremely low vacancy rates are indicative of rental markets in disequilibrium and the final rule includes additional selection criterion to those provided in the proposed rule. In order for the rental housing market to function in an orderly manner, there needs to be an ample supply of available vacant units. Once the vacancy rate falls below a certain percentage, typically when the quantity of units demanded exceeds the quantity of units supplied, this places upward pressure on rental prices. The solution is typically the creation of additional supply; however, in the short run, a market clearing price is harder to achieve and the rental market ceases to function normally. Therefore, the final rule includes vacancy rate as an additional selection criterion to those provided in the proposed rule. Commenters provided varied feedback on the level of vacancy for which areas should be excluded from Small Area FMR designation. The American Community Survey (ACS) provides the most comprehensive data measuring rental vacancies across all metropolitan areas; however, due to the manner in which vacancies are assessed in the ACS, as detailed in the Regulatory Impact Analysis of this rule, HUD research indicates that ACS based vacancy rates tend to underrepresent the actual level of vacancies across most markets; consequently, the final rule excludes any metropolitan area with an ACS based vacancy rate of 4 percent or lower from designation as a Small Area FMR designated area as a 4 percent vacancy rate measured by the ACS is roughly equivalent to an actual vacancy rate of 5 percent under reasonable assumptions.

While HUD believes the criterion should remain focused on voucher concentration rather than residential segregation, HUD also agrees with commenters that the voucher concentration criterion should be improved to better target communities where voucher concentration is most severe. Consequently, in addition to the voucher concentration ratio included in the proposed rule, the final rule also requires the numerator of this measure, the concentration of voucher holders within concentrated low income areas, to meet a minimum standard level (25 percent).

HUD notes the other suggestions made by commenters and will evaluate program effects including access to neighborhoods with better employment opportunities, better schools, lower crime rates and lower racial and ethnic isolation to inform any future expansion of the program.

11. The proposed rule makes no changes to 24 CFR 888.113(g), the FMR for Manufactured home space rental for voucher tenants that own manufactured housing units. Under this proposed rule Small Area FMRs would apply to manufactured home space rentals in areas designated for Small Area FMRs (*i.e.,* FMRs for space rentals would be set at 40 percent of the 2-bedroom Small Area FMR). Given the costly nature of moving a manufactured home, HUD is seeking comment on whether or not current voucher holders using their voucher for a manufactured home space should be exempt from Small Area FMRs at their current address?

Comment: Most commenters suggested HUD should exempt manufactured home space rental from

Small Area FMRs wholesale. Others suggested an exemption for existing voucher holders so long as the voucher holder remains at the current address. Some suggested HUD exempt only when the Small Area FMR is lower than the metro FMR; some pointed out that voucher holders in ZIP codes where the payment standard will increase under Small Area FMR should be permitted to benefit from the increased payment standard. Others commented that Small Area FMRs should be voluntary altogether, including for those areas which may have vouchers for manufactured home space. Manufactured homes are often limited by local regulation to particular sites. Residents should not be penalized in subsidy available to support their housing choice based on the ZIP code location of allowable manufactured home sites.

HUD Response: Based on public comment, the final rule exempts vouchers used to subsidize the rent of a manufactured home space from the use of Small Area FMRs.

12. HUD has proposed to amend the Exception Payment Standard rules at 24 CFR 982.503 to account for the fact that FMR areas in Small Area FMR designated metropolitan areas will be ZIP codes. HUD is seeking public comment to determine if there are other amendments HUD should make to the Exception Payment Standard Regulations to better facilitate the approval process of Exception Payment Standards. For example, the current exception payment standard regulations require that an exception payment standard may not include more than 50 percent of the population of the FMR area. This may be an impractical requirement when determining exception payment standards within a ZIP code. Similarly, given that ZIP codes more narrowly define the FMR area, the provision within the regulation that program justification may include helping families find housing outside areas of high poverty may not be applicable even though an exception payment standard may be necessary. Therefore, HUD is soliciting feedback to ensure that the exception payment standard regulations are revised so that PHAs may use this component of the regulations to optimize the administration of their HCV programs.

Comment: Some commenters offered that under Small Area FMRs, EPSs become much less necessary, other than to group neighborhoods into payment standard buckets to simplify program administration and limit significant volatility between years.

Specific requests of commenters included eliminating the population cap that prevents more than 50 percent of an area to be covered by an EPS, and clarify that that exception rents may exceed 150 percent of Small Area FMR. Commenters also suggested HUD clarify how exceptions will work for Census tracts and other small geographic areas. Some commenters suggested EPS should be available up to 130 percent in the first two years of the program; others request up to 150 percent of the FMR. Another commenter stated that HUD should publish additional guidance with the final rule that directs PHAs to allow EPS as a reasonable accommodation in any instance when a voucher family will experience hardship or pay over 30 percent of their income in rent.

Commenters recommended that PHAs be able to set a payment standard up to 120 percent of the FMR without requesting HUD approval. Other suggested eliminating the distinction between exceptions above and below 120 percent of FMR, as the differences and processes are complex. If they are kept separate, commenters suggested HUD should revise the regulation for 110–120 percent to eliminate the requirements that PHAs submit information other than data on market rents or inability to secure housing and, for standards below the basic range, rent burdens. If HUD retains the requirement that increases above 120 percent prevent financial hardship, it is crucial that HUD revise the regulation or provide guidance making clear that this includes potential hardship that deters families from moving to the exception area in the first place.

As far as the process, overall, commenters requested streamlined processes, clear guidance and an expedited path for approvals that is standardized across local HUD offices and HUD headquarters. Some commenters suggested a system in which HUD's Office of Policy Development and Research obtains data from local housing authority rent reasonable databases to immediately grant exception payment standards that will support the utilization of vouchers and prevent families from falling into homelessness or remain homeless. Commenters suggested allowing exception payment standards to remain in place for a prolonged period without PHA action. HUD could review existing exception every so many years.

HUD Response: This final rule addresses the operation of exception payment standards with respect to Small Area FMRs. Specifically, the rule allows PHAs to request exception payment standards within ZIP codes. Additionally, for the purposes of exception payment standards within the context of Small Area FMRs, the final rule removes the 50 percent population cap for exception payment standards within ZIP codes. Furthermore, HUD is also simplifying the procedures for PHAs not using Small Area FMRs to run their HCV program. The final rule provides that PHAs in non-Small Area FMR areas may request an exception payment standard from the HUD Field Office of up to 110 percent of the relevant Small Area FMR with no additional supporting information. Finally, as noted earlier the final rule provides that HUD may approve a request by a PHA administering the HCV program under the Small Area FMRs for an exception payment standard for a ZIP Code area in accordance with the conditions and procedures set forth in a **Federal Register** Notice as opposed to the formerly applicable requirements under 982.503(c). This will allow HUD to establish a streamlined and responsive process for Small Area FMR ZIP Code area exception payment standard requests.

HUD has decided against proposing comprehensive changes to its EPS regulations at this time due to the implementation of Small Area FMRs and the potential to learn from PHA experiences with their adoption and operation. The suggestions offered through the public comment process will however be taken into consideration whenever HUD does revisit its EPS regulations.

13. HUD makes administrative data for research into HUD's programs available in a variety of ways (*i.e.,* Public Use Microdata Sample—PUMS data, Research Partnerships, and Data License Agreements). HUD seeks comment on what additional data or dissemination strategies would be helpful to the public to assess the impact of the implementation of the Small Area FMR proposed rule.

Comment: Commenters requested both data and dissemination at the federal and PHA levels. They include:

- PUMS data set should include geographic identifiers for the census tract and ZIP code tabulation area, and HUD Fair Market Rent Metro Areas (HMFAs), so researchers can incorporate neighborhood information from, for example, the American Community Survey. Because HMFAs often diverge from OMBs definitions of metropolitan areas, it would also be helpful to append key HMFA-level variables (poverty rate, median gross rent, income, etc.) to the microdata.

- Number of voucher landlords and units associated with those landlords by ZIP code to which PHAs provide access to new voucher holders. This data is public, but not easily available or centralized.
- Ensure assessments of fair housing provide data at the ZIP code level.
- Study the impact the rule has on households' ability to use their voucher within the allowable time.
- Data from the evaluation of the Small Area FMR demonstration.
- List of ZIP codes by jurisdiction and the associated FMR rather than a list at the level of metropolitan area.
- All data used in the formula to designate the areas required to implement Small Area FMRs
- Data on whether increases to FMR for higher rent neighborhoods effectuates an increase in leasing activity in these neighborhoods.
- External evaluation of the Small Area FMR implementation parallel to implementation.
- Data not only for designated Small Area FMR areas and PHAs that opt in, but also for other areas and PHAs in order to allow comparison:
  - Number of voucher holders by ZIP code including relevant data on race, ethnicity, disability status and other factors relevant to fair housing concerns.;
  - Voucher success rates by PHA (if available and reliable); PHAs should report the average time it takes to lease-up for new and continuing voucher participants (who continue in their current jurisdiction or attempt to port their voucher);
  - Voucher turnover rates; to assess the impact of Small Area FMRs on program participants, it is essential that data is collected on the number of participants leaving and entering the program each year;
  - Voucher program exit and new admission rates by PHA;
  - Number of voucher holders with rent burdens at various levels (30 percent of income or less, 31–40 percent, 41–50 percent, and so forth) by PHA or by ZIP code;
  - Number of units on lists provided to families issued vouchers, broken down by ZIP code and PHA.
- Technical Assistance opportunities for impacted landlords and beneficiaries to understand the policy revisions and rationales.
- Information on what strategies PHAs used in conjunction with the Small Area FMRs.
- HUD should determine and publicize what payment standards PHAs use, and make this information available to help HCV households with their housing search.
  - Publicly Available ZIP-Code-Level Counts of Voucher Holders and Their Race: Currently, HUD makes the number of voucher holders in a particular area available in two ways: (1) On HUD's Open Data Web site and (2) as part of the underlying data used in the AFH Data and Mapping Tool. Both give voucher counts on the Census tract level, while the latter source includes a count of the number of non-white voucher holders in each tract. Although HUD releases a crosswalk file that matches Census tracts and ZIP Code Tabulation Areas (ZCTAs), the process of converting HUD's tract-level data to ZCTAs is complex and riddled with potential for errors. Since Small Area FMRs use ZCTAs, not Census tracts, as the primary unit of analysis, HUD should release voucher counts at the ZCTA level in order to evaluate the impact of Small Area FMRs. The data made available by race will also allow evaluation of how the Small Area FMR rule impacts jurisdictions' AFFH obligations.
- Whether increasing available asking rents impact local land use decisions.
- Data on total tenant payments by age group over the course of voucher lease-up and through Small Area FMR transitions, payment standard changes by housing agencies within Small Area FMR areas, and the use and value of PBVs.
- Availability of health services in new/old neighborhoods, the rate at which households retain their vouchers in new/old neighborhoods, and the financial costs of moving beyond rent payments (transportation, deposits, etc.).

HUD Response: HUD thanks the public for these helpful comments, and will take these recommendations under advisement. HUD does not need to undertake rulemaking to release additional data or information but does need to carefully consider the ramifications and disclosure issues associated with many of the suggestions. As HUD determines what additional information is releasable, HUD will continue to post Small Area FMR-relevant data online at *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.*

Comment: Commenters provided a vast array of requests through this question that support a variety of objectives:

- The ability to assess the efficacy of Small Area FMRs.
- The ability to do additional research into the Housing Choice Voucher program.
- The ability to better administer the Housing Choice Voucher program.

HUD Response: Within the context of the final rule, HUD will release Small Area FMRs accompanied by both the minimum and maximum basic range amounts (90 percent and 110 percent) for each bedroom unit count Small Area FMR. HUD will further sort the ZIP code based Small Area FMRs for each metropolitan area from least to greatest to facilitate PHAs wishing to group multiple ZIP codes together into Payment Standard regions. HUD is taking the rest of these recommendations under advisement and will continue to post Small Area FMR-relevant data online at *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.*

Other Comments

Commenters provided a variety of other comments regarding the proposed rule. Two of these topic areas include Moving To Work (MTW) PHAs, and comments on the methods for calculating FMRs.

Issue: Moving To Work (MTW) PHAs and the use of Small Area FMRs.

Comment: Commenters asked HUD to clarify whether or not MTW PHAs operating in metropolitan areas designated for Small Area FMR usage will have to use Small Area FMRs.

HUD Response: The proposed Rule pointed out that MTW PHAs have the ability to set alternative rent policies, outside of the standard regulations governing the use of FMRs in setting payment standards with approval from HUD. To clarify, MTW PHAs administering the HCV program can exercise flexibility in regards to establishing rent in accordance with the terms of their respective MTW Agreement and approved Annual MTW Plan. If an MTW PHA has not exercised flexibility through their Annual MTW Plan, the Small Area FMR requirements set forth in this Final Rule will apply to the MTW PHA, and the MTW PHA will be required to use Small Area FMRs in place of metropolitan-wide FMRs if the PHA jurisdiction is located within a designated Small Area FMR metropolitan area.

Issue: Methodology for Calculations of Metropolitan Fair Market Rents and Small Area Fair Market Rents.

Comment: Several commenters provided HUD with unsolicited feedback regarding the methods that HUD uses to calculate metropolitan-wide and Small Area FMRs. Several commenters suggested that HUD should modify the process HUD uses to calculate FMRs to be more reflective of market rents.

Overall FMR concerns: Many commenters discussed concerns

regarding overall FMRs, including data lags and gap between local rents that will be embedded into Small Area FMRs.

- Specific suggestions included:
  - Fine tuning current formula to include rent variations for different bedroom size units, and ensuring that the five-year American Community Survey is keeping pace with actual rents in each ZIP code, particularly in the targeted metro areas, and to make upward adjustments as needed.
  - Alter the current FMR methodology to account for trends in local rental markets; cease using the ''Trend Factor'' to calculate FMRs, which measures the forecasted changes in national gross rents, and instead use the percentage change in metropolitan area-wide rents published as part of HUD PD&R's quarterly U.S. Housing Market Conditions Regional Reports.
- Revising the formula
  - Some commenters urged HUD to adopt a methodology for calculating Small Area FMRs that would better ensure access to 40% of units in all ZCTAs.
  - Urged consideration of methodology other than ZIP codes, such as independent analyses of local housing submarkets. ZIP codes may be too large to get desired impact.
  - Calculate 40th-percentile rents with data specific to different unit sizes (rather than indexing the rents to the 2-bedroom units),
  - Rely upon local rather than national CPI data in order to trend FMRs forward

HUD Response: HUD appreciates the breadth of comments provided to HUD regarding the methods used to calculate FMRs (both metropolitan-wide and Small Area FMRs). As stated earlier in the response to comments, in this final rule HUD is implementing a floor on the amount that FMRs can decrease from year to year. This is being done to provide in-place tenants with an additional element of subsidy protection during the transition from metropolitan FMRs to Small Area FMRs. Additionally, limiting the annual decrease in FMRs will help ensure a sufficient supply of affordable units during the transition to both existing tenants who wish to move and new voucher families entering the market. The final rule does not otherwise affect the data or methods HUD uses to estimate FMRs or Small Area FMRs. Due to provisions within HOTMA, HUD will be publishing **Federal Register** notices of proposed material changes in the methods for calculating FMRs for public comment before these changes are incorporated into the calculation of FMRs. HUD will respond to comments on FMR methodology provided in response to the proposed Small Area FMR rule as well as the notice announcing Fiscal Year 2017 FMRs in an upcoming Notice of Proposed Material Change in FMRs.

Issue: Rulemaking is premature.

Comment: A commenter stated that given that demonstrations of this idea in five locations are well underway, HUD's proposal is premature. The commenter stated that demonstrations have the admirable purpose of working out the problems that occur even with proposals that are highly meritorious in general terms before implementing them at large scale.

HUD Response: While HUD acknowledges that more information on the overall effects of the Small Area FMR approach will be forthcoming when the results of the Small Area FMR demonstration are available to inform broad policy, HUD believes that it is not premature to implement Small Area FMRs on this limited basis in those areas where it has the potential to address significant voucher concentration concerns. Through this final rule, HUD seeks not only to employ a better tool than the 50th percentile policy to expand housing opportunities for families where voucher concentration is a particular challenge but to also provide PHAs with the administrative flexibility to implement appropriate tenant protections to families currently under HAP contract and to address changing market conditions.

Issue: Continuation in Small Area FMRs in the Dallas, TX HUD Metro FMR Area.

Comment: A commenter noted that the Dallas, TX HUD Metro FMR Area, which has been operating under Small Area FMRs since 2010 pursuant to a court settlement, was very close to the thresholds for inclusion as a Small Area FMR area, and raised concerns that it might be excluded from continuing as a Small Area FMR area in the final rule or in the future.

HUD Response: While the final rule establishes a permanent Small Area FMR program, the final does not void the settlement agreement by which PHAs in the Dallas, TX HUD Metro FMR Area are required to operate with Small Area FMRs. PHAs in the Dallas TX, HUD Metro FMR Area will continue to be required to operate using Small Area FMRs in accordance with this final rule. The final rule contains no provisions for discontinuing Small Area FMRs once they have been implemented for a FMR Area.

IV. Findings and Certifications

Regulatory Planning and Review

OMB reviewed this final rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). This rulemaking was determined to be an ''economically significant regulatory action,'' as defined in section 3(f)(1) of the order. The accompanying Regulatory Impact Analysis (RIA) for this rulemaking addresses the costs and benefits that would result from implementation of this final rule and the RIA can be found at *http://www.regulations.gov.*

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This final rule concerns the establishment of fair market rent schedules and related external administrative requirements or procedures that do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. At the proposed rule stage, HUD prepared an Initial Regulatory Flexibility Analysis (IRFA) and HUD follows the IRFA with a Final Regulatory Flexibility Analysis (FRFA). HUD finds in the FRFA that this final rule will not have a significant economic impact on a substantial number of small entities. The FRFA, which is found in Appendix A to this final rule and can also be found at *www.regulations.gov* elaborates, and provides details on how HUD made this finding.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 982 is 14.871.

List of Subjects

24 CFR Part 888

Grant programs-housing and community development, Rent subsidies.

24 CFR Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs-housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 985

Grant programs-housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 888, 982, 983, and 985 as follows:

[Note: Remainder of notice omitted. For text of 24 CFR Parts 982 and 985, see CFR References section of this Coursebook]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–5976–N–03]

Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Implementation and request for comment.

SUMMARY: On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016 (HOTMA). Several of the statutory amendments made by HOTMA affect the Project-Based Voucher (PBV) program or the Housing Choice Voucher (HCV) program. HOTMA also gave HUD the authority to implement many of those changes by notice, and those statutory changes are not effective until HUD issues that notice. This document serves as the implementation notice for several of the provisions of HOTMA that impact the HCV and PBV programs, and seeks additional public input on both the implementing requirements in this document and future changes to these programs.

DATES: *Effective date: April 18, 2017.*

Comment due date: March 20, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this document. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Please direct all questions about this notice to *HOTMAquestionsPIH@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 2016, President Obama signed HOTMA into law (Public Law 114–201, 130 Stat. 782). HOTMA made numerous changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f). HUD issued a notice on October 24, 2016, at 81 FR 73030, announcing to the public which of the statutory changes made by HOTMA could be implemented immediately, and which required further guidance from HUD before owners, public housing agencies (PHAs), or other grantees may use the new statutory provisions.

This document implements new statutory provisions regarding certain inspection requirements for both HCV tenant-based and PBV assistance (found in § 101(a)(1) of HOTMA), the definition of PHA-owned housing (§ 105 of HOTMA), and changes to the PBV program at large (§ 106 of HOTMA) by providing the additional information needed for PHAs and owners to use those provisions. The document also implements and provides guidance on the statutory change to the HCV housing assistance payment (HAP) calculation for families who own manufactured housing and are renting the manufactured home space (§ 112 of HOTMA).

While this document makes the provisions below effective, HUD seeks further public comment on the implementation of these provisions. Below each section describing the implementation of a statutory provision, HUD has included specific questions for public comment. All comments must be submitted using the two methods detailed above.

II. Implementation Information

A. Inspections of Dwelling Units (HOTMA § 101(a)(1))

Section 101(a)(1) of HOTMA adds a modified subparagraph (A) to section 8(o)(8) of the 1937 Act (42 U.S.C. 1437f(o)(8)). The amended subparagraph continues the requirement of inspections of dwelling units assisted under section 8(o) of the 1937 Act to determine that the units meet housing quality standards (HQS) prior to the PHA making a housing assistance payment. However, new language provides an exception to this requirement, allowing the PHA to approve the assisted tenancy and commence housing assistance payments if the unit fails the inspection but only has non-life-threatening HQS deficiencies. If a PHA makes payments under that exception, the PHA must withhold any assistance payments if the non-life-threatening deficiencies are not remedied within no more than 30 days of the PHA notifying the owner of the unit, in writing, of the unit's failure to comply with HQS.

In addition, new language authorizes occupancy of a unit prior to the inspection being completed if the unit had, in the previous 24 months, passed an alternative inspection method under section 8(o)(8)(E). The PHA must inspect the unit within 15 days of receiving the Request for Tenancy Approval. Once the unit passes the HQS, the PHA may make assistance payments retroactively, dating back to the beginning of the assisted lease term, which is the effective date of the HAP contract. Per 24 CFR 982.309(b), the term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

This document does not implement other provisions in section 101(a) of HOTMA.

1. Occupancy Prior to Meeting HQS (§ 8(o)(8)(A)(ii) of 1937 Act)

As a result of the HOTMA amendments to Section 8(o)(8)(A)(ii) of the 1937 Act, PHAs may choose to approve an assisted tenancy, execute the HAP contract, and begin making housing assistance payments on a unit that fails the initial HQS inspection, provided the unit's failure to meet HQS is the result only of non-life-threatening conditions, as such conditions are defined by HUD. In exercising this administrative flexibility under § 8(o)(8)(A)(ii), PHAs must comply with the definitions and requirements in this section, in addition to those provided in HUD regulations and requirements. If the PHA exercises this authority, this document overrides the requirement at 982.305(a)(2) and (b)(i) that the PHA has determined that the unit *meets* HQS before approval of the tenancy and beginning of the initial lease term. (The PHA must still conduct the HQS inspection prior to approval of the tenancy and the beginning of the initial lease term in accordance with those regulations.)

A. HUD Definition of Non-Life-Threatening and Life-Threatening Conditions

For the purposes of implementing § 8(o)(8)(A)(ii), HUD is defining a non-life-threatening condition as any condition that would fail to meet the housing quality standards under 24 CFR 982.401 and is not a life-threatening condition. Further, for the purposes of this implementation notice, HUD is defining life-threatening conditions as follows:

(1) Gas (natural or liquid petroleum) leak or fumes. A life-threatening condition under this standard is one of the following: (a) A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking; or (b) a strong gas odor detected with potential for explosion or fire, or that results in health risk if inhaled.

(2) Electrical hazards that could result in shock or fire. A life-threatening condition under this standard is one of the following: (a) A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed; (b) a light fixture is hanging by its wires; (c) a light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day to day use of the unit; (d) a receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed; (e) a receptacle (outlet) or switch has a missing or damaged cover plate and electrical connections or wires are exposed; (f) an open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses; (g) a cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections; (h) any nicks, abrasions, or fraying of the insulation that expose conducting wire; (i) exposed bare wires or electrical connections; (j) any condition that results in openings in electrical panels or electrical control device enclosures; (k) water leaking or ponding near any electrical device; or (l) any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition.

(3) Inoperable or missing smoke detector. A life-threatening condition under this standard is one of the following: (a) the smoke detector is missing; or (b) the smoke detector does not function as it should.

(4) Interior air quality. A life-threatening condition under this standard is one of the following: (a) the carbon monoxide detector is missing; or (b) the carbon monoxide detector does not function as it should.

(5) Gas/oil fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney or venting. A life-

threatening condition under this standard is one of the following: (a) The chimney or venting system on a fuel fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gases; (b) a gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside; (c) a fuel fired space heater is not properly vented or lacks available combustion air; (d) a non-vented space heater is present; (e) safety devices on a fuel fired space heater are missing or damaged; or (f) the chimney or venting system on a fuel fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged which may cause improper or dangerous venting of gases.

(6) Lack of alternative means of exit in case of fire or blocked egress. A life-threatening condition under this standard is one of the following: (a) Any of the components that affect the function of the fire escape are missing or damaged; (b) stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency; or (c) the building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency.

(7) Other interior hazards. A life-threatening condition under this standard is a fire extinguisher (where required) that is missing, damaged, discharged, overcharged, or expired.

(8) Deteriorated paint, as defined by 24 CFR 35.110, in a unit built before 1978 that is to be occupied by a family with a child under 6 years of age. This is a life-threatening condition only for the purpose of a condition that would prevent a family from moving into the unit. All lead hazard reduction requirements in 24 CFR part 35, including the timeline for lead hazard reduction procedures, still apply.

(9) Any other condition subsequently identified by HUD as life threatening in a notice published in the **Federal Register**. HUD will notify PHAs if such changes are made.

(10) Any other condition identified by the administering PHA as life-threatening in the PHA's administrative plan prior to this notice taking effect.

B. Administrative Plans

Before implementing § 8(o)(8)(A)(ii), PHAs must amend their HCV administrative plans to include HUD's definition of non-life-threatening conditions as any conditions that would fail to meet the housing quality standards under 24 CFR 982.401 and do not meet the definition of life-threatening provided in this notice. The PHA's HCV administrative plan must list the specific life-threatening conditions that will be identified through the PHA's inspections, including the life-threatening conditions listed in Section 1.A. above and any other conditions that the PHA identified in its HCV administrative plan as life-threatening prior to this notice taking effect.

The PHA must also specify in its administrative plan how it will apply the flexibility provided by § 8(o)(8)(A)(ii) to its HCV and/or PBV program. The PHA may opt to apply the policy to all the PHA's initial inspections or to a portion of the PHA's initial inspections. The PHA's administrative plan must specify the circumstances under which the PHA will enter into a HAP contract for a unit that fails the initial HQS inspection as a result only of non-life-threatening conditions and the circumstances under which a PHA will require the unit to meet all HQS standards before entering into the HAP contract.

The changes to the PHA's HCV administrative plan to define non-life-threatening conditions and to specify how the policy will be applied across its portfolio of units may constitute significant amendments to the PHA's PHA plan, in which case a PHA must follow its PHA plan amendment and public notice requirements before implementing § 8(o)(8)(A)(ii).

C. Application of Life-Threatening Definition to aAl Inspections

A PHA that chooses to implement § 8(o)(8)(A)(ii) must apply the list of life-threatening conditions identified in its HCV administrative plan to all HQS inspections that the PHA conducts, not just the initial inspections. In other words, PHAs that adopt § 8(o)(8)(A)(ii) must amend their HCV administrative plans to include HUD's definition of life-threatening conditions, as well as any additional life-threatening conditions included in the PHA's HCV administrative plan that were already defined in the PHA's HCV administrative plan prior to this notice taking effect, and must use those definitions in its ongoing HQS inspections and HQS enforcement activities as well as its initial inspections. The PHA must use the new definition of life-threatening deficiencies across all of its HQS inspections even if the PHA chooses to apply § 8(o)(8)(A)(ii) only to a portion of its initial inspections. The only exception to this uniformity requirement is the presence of deteriorated paint in units built before 1978 to be occupied by a family with a child under the age of 6. The presence of such hazards during the initial HQS inspection means a PHA may not approve the tenancy, execute the HAP contract and make assistance payments until lead hazard reduction is complete. However, in the case where the deficiency is identified for a unit under HAP contract during a regular or interim HQS inspection, lead hazard reduction need not be completed within 24 hours. Instead, PHAs and owners must follow the requirements in 24 CFR part 35.

D. Documenting the Absence of Life-Threatening Conditions

A PHA that chooses to implement § 8(o)(8)(A)(ii) must ensure that the unit does not have any life-threatening deficiencies before the PHA approves the assisted tenancy and executes the HAP contract. The PHA must document that the unit passes all inspection items that relate to any life-threatening deficiencies identified in the PHA's HCV administrative plan (including those on HUD's list of life-threatening deficiencies). HUD will provide guidance for PHAs on how to incorporate HUD's definition of life-threatening conditions into its regular HQS procedures for purposes of implementing § 8(o)(8)(A)(ii).

E. Notification of Owners and Tenants

PHAs that adopt § 8(o)(8)(A)(ii) must notify owners and families, as applicable, of the new procedures and timelines for assistance payments. If the initial inspection on the unit identifies one or more non-life-threatening deficiencies, the PHA must provide the family a list of the deficiencies and offer the family the opportunity to decline to enter into the assisted lease without losing the voucher. The PHA must also notify the family that if the owner fails to correct the non-life-threatening deficiencies within the PHA-specified time period, the PHA will terminate the HAP contract, which in turn terminates the assisted lease, and the family will have to move to another unit in order to receive voucher assistance.

F. Housing Assistance Payments

PHAs that adopt § 8(o)(8)(A)(ii) may, with the agreement of the family, approve the assisted tenancy, execute the HAP contract, and make housing assistance payments for a unit that fails the initial HQS inspection only as a result of non-life-threatening conditions as defined above. If the non-life-threatening conditions are not corrected within 30 days of the PHA notifying the owner of the unit, in writing, of the unit's failure to comply with HQS, the

PHA must withhold any further assistance payments until those conditions are addressed and the unit is in compliance with the housing quality standards. After the 30-day correction period has passed and the PHA begins withholding payments, the PHA may establish a policy regarding the maximum amount of time it will withhold payments before abating payments or terminating the HAP contract for owner non-compliance with HQS. Once the unit is in compliance, the PHA may use any payments withheld to make payments for the period during which payments were withheld.

The PHA will follow its administrative policy on when to issue a new voucher to the family and when to terminate the HAP contract for owner non-compliance with HQS. HUD expects PHAs to require prompt correction of HQS deficiencies to minimize the amount of time a family could be living in a unit that is not HQS compliant. There may be some cases where repairs cannot be made immediately. However, under no circumstances may the HAP contract continue beyond 180 days of the effective date of the HAP contract if unit is not in compliance with HQS.

If the PHA adopts this administrative policy, 24 CFR 982.305(a) and (b) remain in effect, with the exception that the PHA is required to inspect the unit and determine that there are no life-threatening deficiencies (rather than determining the unit satisfies the HQS) before the approval of the assisted tenancy and the beginning of the assisted lease term.

G. Notification of HUD

PHAs that plan to adopt § 8(o)(8)(A)(ii) must notify HUD of their intention to do so. The notification must be provided at least 30 days before the new policy is implemented and must be sent by email to *HOTMA_HQS@hud.gov.* This notification allows HUD to track the usage of this provision as authorized by this notice for the purpose of making adjustments to the PHA's scoring under HUD's Section Eight Management Assessment Program (SEMAP) as needed.

H. Section Eight Management Assessment Program (SEMAP)

SEMAP Indicator 11, Pre-Contract HQS Inspection, scores the PHA based on the percentage of units that pass the HQS inspection before the beginning of the assisted lease and HAP contract. This indicator is inconsistent with § 8(o)(8)(A)(ii), assuming a PHA utilizes the new statutory flexibility. Therefore, HUD will issue specific guidance on how SEMAP Indicator 11 will be modified to ensure that PHAs that adopt § 8(o)(8)(A)(ii) will be scored based on the new statutory standard. Until further guidance is provided, PHAs should continue to report as usual in PIC (that is, the date the PHA enters into PIC for when the unit passes HQS inspection is the date that the unit is found to have no HQS deficiencies, including no non-life-threatening deficiencies).

Questions for Comment

1. Is HUD's definition of non-life-threatening conditions as any condition that does not meet HUD's definition of life-threatening appropriate? If not, is there an alternate definition HUD should use?

2. HUD's list of life-threatening conditions is based on the definition currently being used by the UPCS–V demonstration. Are there other sources that HUD should consider for this list?

3. Is establishing 180 days as the maximum time the PHA may withhold or abate payments before terminating the HAP contract for the owner's failure to make the repairs the appropriate time frame? Should this time period be shorter or longer?

4. How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement § 8(o)(8)(A)(ii)?

5. Are there any other discretionary factors that PHAs should consider in implementing § 8(o)(8)(A)(ii)?

2. Alternative Inspections (§ 8(o)(8)(A)(iii) of 1937 Act)

The new § 8(o)(8)(A)(iii) of the 1937 Act authorizes occupancy of a unit prior to the PHA's inspection being completed if the property has, in the previous 24 months, passed an alternative inspection method that qualifies as an alternative inspection method pursuant to § 8(o)(8)(E). In this case, a PHA may also make assistance payments retroactively, dating back to the effective date of the HAP contract and assisted lease term, once the unit has been inspected and found to meet HQS standards. In exercising this administrative flexibility under § 8(o)(8)(A)(iii), PHAs must comply with the definitions and requirements in this section, in addition to those provided in HUD regulations and requirements. If a PHA exercises this authority, this document overrides the regulatory requirement at 24 CFR 982.305(a)(2) and (b)(1)(i) that the PHA inspect the unit and determine it meets HQS prior to approving the tenancy and the beginning of the assisted lease term. The requirements of this document also overrides §§ 982.305(b)(2) and 982.305(c)(1) and (3).

A. Eligible Alternative Inspection Methods

In order to qualify as an alternative inspection method for § 8(o)(8)(A)(iii), the inspection method must meet the same requirements for the use of alternative inspections under 24 CFR 982.406. Specifically:

(1) The PHA must be able to obtain the results of the alternative inspection.

(2) If the alternative inspection employs sampling, the PHA may rely on such alternative method only if the HCV or PBV unit was included in the population of units forming the basis of the sample. For example, if a 100-unit property includes 20 units that are occupied by HCV-assisted families or are under a PBV contract, then those 20 units must be included in the universe of units from which the sample was pulled. This does not mean that the 20 units had to be included in the actual sample of units that were inspected under the alternative inspection, but that these units were included in the universe of potential units from which the sample was drawn.

(3) A PHA may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs), or inspections performed by HUD, without prior HUD approval. However, before employing this alternative method the PHA must amend its HCV administrative plan and notify HUD as described below.

(4) If the PHA wishes to rely on an alternative inspection method other than that used for HOME, LIHTC, or inspections performed by HUD, the PHA must, prior to amending its HCV administrative plan, submit to HUD's Real Estate Assessment Center (REAC) a copy of the inspection method it wishes to use, along with its analysis of the inspection method that shows that the method ''provides the same or greater protection to occupants of dwelling units'' as would HQS. A PHA may not rely upon such alternative inspection method unless and until REAC has reviewed and approved use of the method and the PHA has amended its HCV administrative plan and notified HUD as described below. A PHA that uses such alternative inspection method must monitor changes to the standards and requirements applicable to such method. If any change is made to the alternative inspection method, the PHA must submit to REAC a copy of the revised standards and requirements, along with a revised comparison to

HQS. If the PHA or REAC determines that the revision would cause the alternative inspection to no longer meet or exceed HQS, then the PHA may no longer rely upon the alternative inspection method for § 8(o)(8)(A)(iii).

B. Administrative Plans

The PHA must identify the alternative inspection method(s) being used in its HCV administrative plan, making clear the specific properties or types of properties for which the inspection method(s) will be employed. This change may be a significant amendment to the PHA Plan, in which case a PHA must follow its PHA Plan amendment and public notice requirements before using the alternative inspection method.

C. Authorization of Occupancy

Section 8(o)(8)(A)(iii) states that the PHA may ''authorize occupancy'' before the PHA completes its inspection if the property passed the alternative inspection. The PHA authorizes occupancy in response to a Request for Tenancy Approval (RFTA) received from the family. Upon receiving the RFTA, a PHA that elects to use this provision determines whether the property in which the unit is located received an inspection within the previous 24 months that qualifies as an alternative inspection and the unit meets any additional requirements established in the PHA administrative plan. If the property has passed the alternative inspection within the past 24 months, the PHA may approve the assisted tenancy before the PHA conducts the initial HQS inspection. If the PHA chooses to approve the assisted tenancy prior to conducting the HQS inspection, the PHA enters into the HAP contract with the owner and the owner and family enter into the lease agreement and HUD prescribed tenancy addendum before the PHA's HQS inspection takes place. The PHA must conduct the HQS inspection within 15 days of receiving the RFTA (as described below) and after it has executed the HAP contract.

In the case where the PHA exercises its authority under § 8(o)(8)(A)(iii), the PHA must execute the HAP contract with the owner before the PHA's inspection takes place. The PHA must execute the HAP contract with the owner on or before the beginning of the lease term, not within 60 days of the beginning of the lease term as provided in 24 CFR 982.305(c). Since the family will have moved into the unit before the PHA does the initial inspection, the PHA must have a contractual relationship with the owner at the time of the inspection so that the PHA can take enforcement action if the unit does not pass HQS and the owner does not make the necessary repairs within the required timeframes.

D. Timing of the PHA Inspection

Section 8(o)(8)(A)(iii) allows the PHA to authorize occupancy before the PHA's inspection is completed. It does not eliminate the requirement under § 8(o)(8)(A)(i) for the PHA (or designated entity) to conduct the initial inspection. Under the current program regulations at 24 CFR 982.305(b)(2), a PHA with up to 1,250 budgeted units in its tenant-based program must complete the initial inspection within 15 days of receiving the RFTA, and a PHA with more than 1,250 budgeted units in its tenant-based program must complete the initial inspection within a reasonable time after the PHA receives the RFTA. All PHAs that implement Section 8(o)(8)(A)(iii) must complete the initial inspection within 15 days of receiving the RFTA for units located in properties that have met the requirements of an eligible alternative inspection in the past 24 months. The 15-day standard applies to all units for which the PHA employs § 8(o)(8)(A)(iii), regardless of the size of the PHA's tenant-based program.

E. Housing Assistance Payments

The PHA must conduct the initial HQS inspection within 15 days of receiving the RFTA. If the unit passes the PHA's inspection, the PHA may make HAPs retroactively to the effective date of the HAP contract and the start of the assisted lease term. If the unit does not pass the PHA's inspection, and if the PHA has not adopted § 8(o)(8)(A)(ii) regarding the correction of non-life-threatening deficiencies, the PHA may not make housing assistance payments until the HQS deficiencies have been corrected. The PHA must notify the owner in writing of the defects and take enforcement action against the owner if any life-threatening defect (as identified in the PHA's HCV administrative plan) is not corrected within 24 hours or any other defect is not corrected within 30 calendar days or any PHA-approved extension. If the PHA has adopted § 8(o)(8)(A)(ii) and the unit has only non-life-threatening deficiencies, the PHA may make housing assistance payments according to the procedures specified in Section A.1. above.

In deciding whether to implement Section 8(o)(8)(A)(ii), HUD recommends that PHAs carefully consider the complications that could arise if a PHA enters into a HAP contract with an owner on the basis of an alternative inspection but then identifies HQS deficiencies in its initial inspection. The family may be living with these deficiencies during the correction period and may ultimately have to move if the owner is not willing to make the corrections. The PHA will follow its administrative policy on when to issue a new voucher to the family and when to terminate the HAP contract for owner non-compliance with HQS. HUD expects PHAs to require prompt correction of HQS deficiencies to minimize the amount of time a family could be living in a unit that is not HQS compliant. There may be some cases where repairs cannot be made immediately. However, under no circumstances will the HAP contract continue beyond 180 days of the effective date of the HAP contract if unit is not in compliance with HQS.

F. Notification of Owners and Tenants

PHAs that adopt § 8(o)(8)(A)(iii) must notify owners and families, as applicable, of the new procedures and timelines for assistance payments. When authorizing a family to move into a unit prior to the PHA's inspection, the PHA must advise the family of the PHA's list of life-threatening deficiencies so that the family can look for such items in the unit and notify the PHA immediately if such deficiencies are found or decline to enter into the lease with the owner.

G. Notification of HUD

PHAs that plan to adopt § 8(o)(8)(A)(iii) must notify HUD of their intention to do so. The notification must be provided at least 30 days before the new policy is implemented and must be sent by email to *HOTMA_HQS@hud.gov*. This allows HUD to track the usage of this provision as authorized by this notice for the purpose of making adjustments to the PHA's scoring under HUD's Section Eight Management Assessment Program (SEMAP) as needed.

H. Section Eight Management Assessment Program (SEMAP)

SEMAP Indicator 11, Pre-Contract HQS Inspection, scores the PHA based on the percentage of units that pass the HQS inspection before the beginning of the assisted lease and HAP contract. This indicator is inconsistent with § 8(o)(8)(A)(iii), assuming a PHA utilizes the new statutory flexibility. Therefore, HUD will issue specific guidance on how SEMAP Indicator 11 will be modified to ensure that PHAs that adopt § 8(o)(8)(A)(iii) will be scored based on the new statutory standard.

Question for Comment

How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement § 8(o)(8)(A)(iii)?

B. Units Owned by a PHA (HOTMA § 105)

HOTMA amends section 8(o) of the 1937 Act to provide a statutory definition of units owned by a PHA, overriding HUD's current definition at 24 CFR 983.3 for the PBV program and as a PHA-owned unit is described at 24 CFR 982.352. A unit is now ''owned by a public housing agency'' only if the unit is in a project that is one of the following categories:

(1) Owned by a PHA.

(2) Owned by an entity wholly controlled by the PHA.

(3) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner. A ''controlling interest'' is—

(A) holding 50 percent or more of the stock of any corporation;

(B) having the power to appoint 50 percent or more of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);

(C) where 50 percent or more of the members of the board of directors of any corporation also serve as directors, officers or employees of the PHA;

(D) holding 50 percent or more of all managing member interests in an LLC;

(E) holding 50 percent or more of all general partner interests in a partnership; or

(F) equivalent levels of control in other organizational structures.

Units in which PHAs have a different ownership interest are no longer considered to be owned by the PHA.

In order to be considered a ''PHA-owned'' unit as described above, the PHA must have ownership interest in the building itself, not simply the land beneath the building.

For units that were previously considered to be PHA-owned but are no longer PHA-owned due to this definitional change, the PHA must obtain an opinion from its legal counsel that the project in question falls outside the statutory definition. The PHA must keep the opinion in the PHA's files. Until such time that the opinion letter is obtained, the PBV project remains PHA-owned for purposes of program requirements and HUD monitoring. If an ownership structure changes in the future that removes a project from the definition of PHA-owned, the PHA must obtain and keep the same sort of opinion letter. If an ownership structure changes in a manner that would cause a PBV project to be classified as PHA-owned (*e.g.,* PHA ownership interest is increased to an amount greater than 50 percent), the PHA must identify, in writing, within 30 days of the change in ownership, the proposed independent entity that will perform all of the applicable independent entity responsibilities for the project in compliance with 24 CFR 983.59 and PIH Notice 2015–05 (or subsequent guidance) for PBV and 24 CFR 982.352(b) for HCV tenant-based assistance.

For PBV projects where the PHA has an interest in the project, but such interest does not cause the project to be classified as PHA-owned housing as described above, HUD may review the PHA's rent determination for such projects, including the PHA's methodology of determining rent comparability. HUD intends to issue additional guidance concerning HUD review and monitoring of rent determinations and rent adjustments for PBV projects, including cases in which the PHA has an interest in the PBV project.

Questions for Comment

1. Should the definition of ''controlling interest'' be different?

2. Are there programmatic issues with changing a unit's designation from PHA-owned to not PHA-owned that need to be address by HUD?

3. What, if any, additional oversight and monitoring should HUD undertake for units in which the PHA has ownership interest in order to ensure that all program requirements (including rent reasonableness and housing quality standards) are being met, especially in cases where the PHA responsible for enforcing those standards has a financial interest in the project?

C. Project-Based Vouchers (HOTMA § 106)

This section makes several statutory changes to the Project-Based Voucher (PBV) Program in section 8(o)(13) of the 1937 Act. The amendments include:

(1) changing the terminology in the statute from ''structure'' to ''project'' where the statute refers to structure instead of project;

(2) changing the PHA HCV program limitation on PBV vouchers from a 20 percent funding limitation to a 20 percent unit limitation calculation and allowing for additional project-basing of vouchers by raising the limit an additional 10 percent for homeless families, families with veterans, supportive housing for persons with disabilities or elderly persons, or in areas where vouchers are difficult to use. The statute also excludes certain projects that were previously subject to federally required rent restrictions or were receiving another type of long-term HUD housing subsidy from the program PBV limitation entirely;

(3) changing the income-mixing cap on the number of PBV units in a project to be the greater of 25 units in a project or 25 percent of the units in a project (the project unit cap), and making changes to the categories of PBV units that are excepted from this project unit cap;

(4) allowing the PHA to provide for an initial PBV contract of up to 20 years and to further extend that term for an additional 20 years;

(5) allowing the PHA to establish a selection preference for families who *qualify* for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan;

(6) allowing the PHA to attach assistance to structures in which the PHA has an ownership interest or control without following a competitive process; and

(7) allowing PHAs to 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.

This notice does not implement all the provisions of section 106 of HOTMA, but only those where HUD believes it is reasonable to do so and does not provide undue burden on PHAs to implement. HUD may provide additional guidance to this notice to ensure effective implementation and elaborate on issues that may need clarification.

Provisions under section 106 of HOTMA that are *not* implemented by this document and that the PHA and owner may not yet implement are as follows:

(1) Entering into a PBV HAP Contract for any unit that does not qualify as existing housing and is under construction or recently has been constructed regardless of whether the PHA and owner executed an Agreement to Enter a Housing Assistance Payments Contract (AHAP) (see section 106(a)(4) of HOTMA);

(2) Providing rent adjustments using an operating cost factor (see section 106(a)(6) of HOTMA);

(3) Establishing and utilizing procedures for owner-maintained site-

based waiting lists (see section 106(a)(7) of HOTMA); and

(4) Concering the environmental review requirements for existing housing (see section 106(a)(8) of HOTMA).

1. Changing ''structure'' to ''project'' (§ 106(a)(1) of HOTMA)

This provision amends section 8(o)(13) by replacing the term ''structure'' with the term ''project'' throughout the paragraph. No guidance is needed to make this change. In accordance with the law, this document serves as official notice that this statutory change is effective as of *April 18, 2017.* HUD will issue any needed conforming regulatory changes in the future.

2. Changing the Maximum Amount of PBVs Permitted in the PHA HCV Program (§ 8(o)(13)(B) of 1937 Act).

This section of the document overrides 24 CFR 983.6 of the PBV program regulations.

A. Maximum Amount of PBVs in the PHA's HCV Program

Under the new § 8(o)(13)(B) of the 1937 Act, PHAs may now project-base up to 20 percent of the PHA's authorized units, instead of 20 percent of the PHA's voucher budget authority. However, the PHA is still responsible for determining the amount of budget authority it has is available and ensuring that the amount of assistance that will be attached to the units is available under the ACC, regardless of whether the PHA has vouchers available for project-basing.

Prior to issuing a request for proposals (RFP) (24 CFR 983.51(b)(1)), selecting a project based on a previous competition (24 CFR 983.51(b)(2)), or selecting a project without following a competition process where the PHA has ownership interest and is engaged in improving, developing or replacing a public housing property or site (see section C.7 of this document), the PHA must submit to the local field office all the following information (in lieu of following the requirements of 24 CFR 983.6(d)):

(1) The total number of units authorized under the Consolidated Annual Contributions Contract (ACC) for the PHA (excluding those PBV units entirely excluded from the cap described in sections C.2.C and C.2.D below). This number of authorized units includes special-purpose vouchers such as HUD–VASH (except as provided in section D below) and Family Unification Program vouchers. The PHA must also identify the number of PBV units that are excluded from total, if applicable.

(2) The total number of units currently committed to PBV (excluding those PBV units entirely excluded from the cap described in sections C.2.C and C.2.D below.). The number of units ''committed to PBV'' is comprised of the total number of units that are either (a) currently under PBV HAP contract, (b) under an Agreement to Enter into HAP contract (AHAP), or (c) covered by a notice of proposal selection (24 CFR 983.51(d)). The PHA must also identify the number of PBV units that are excluded from the total, if applicable. This number must match the number of PBV units excluded from the baseline units (discussed above).

(3) The number of units to which the PHA is proposing to attach project-based assistance through the new RFP or selection.

The PHA is no longer required to submit information on funding or available budget authority when submitting information to HUD on its intent to project-base vouchers. However, PHAs are still required to provide this PBV unit information to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the Request for Proposals (or makes the selection based on a previous competition or noncompetitively as applicable). The PHA continues to submit the required information electronically to the HUD field office by sending an email to *pbvsubmission@hud.gov.* The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

B. Additional Project-Based Units

HOTMA further allows PHAs to project-base an additional 10 percent of its units above the 20 percent program limit, provided those additional units fall into one of the following categories:

(1) The units are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), and contained in the Continuum of Care Interim Rule at 24 CFR 578.3. See *https://www.federalregister.gov/d/2012-17546* and *https://www.federalregister.gov/d/2016-13684.*

(2) The units are specifically made available to house families that are comprised of or include a veteran. A veteran is an individual who has served in the United States armed forces. The PHA may further define ''veteran'' for purposes of determining if the units are eligible for this exception. For example, the PHA could require that the veteran must be eligible to receive supportive services from the Department of Veterans Affairs or require that the veteran was not dishonorably discharged.

(3) The units provide supportive housing to persons with disabilities or to elderly persons. The definitions of a person with disabilities and an elderly person are found at 24 CFR 5.403. Supportive housing means that the project makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing. Such services may include (but are not limited to):

(A) meal service adequate to meet nutritional need,

(B) housekeeping aid,

(C) personal assistance,

(D) transportation services;

(E) health-related services;

(F) educational and employment services: or

(G) other services designed to help the recipient live in the community as independently as possible.

The PHA must include in the PHA administrative plan the types of services offered to families for a project to qualify for the exception and to the extent to which such services will be provided. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. A PHA may not require participation as a condition of living in an excepted unit, although such services may be offered.

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

(4) The units are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.

These categories are those under which a PHA is permitted to project-base an additional 10 percent of its units above the normally applicable 20 percent PBV program limitation. These categories are separate and distinct from exceptions to the income-mixing requirements that limit the number and percentage of units within a particular

project to which PBV assistance may be attached (no more than the greater of 25 units or 25 percent of the units), which is discussed later in this document.

If a PHA wishes to add PBV units under this exception authority, the PHA must submit the same information in section C.2.A above to the Field Office, and identify the exception category (or categories) for which the PHA will project-base additional units (up to an additional 10 percent above the normally applicable PBV program limitation) and the specific number of units that qualify under the exception category.

PBV units may only be covered by this 10 percent exception authority if the PBV HAP contract was first executed on or after the effective date of this notice.

C. Units Not Subject to PBV Program Unit Limitation

New language in section 8(o)(13)(B) provides that units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD do not count toward the percentage limitation when PBV assistance is attached to them.

(1) *Exception requirements.* For purposes of this document, the unit must meet the following conditions in order to qualify for this exception:

(a) The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice; and

(b) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project based on a prior competition or without competition, the unit met at least one of the two following conditions:

(i) The unit received one of the following forms of HUD assistance:

(I) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).

(II) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the section 8 moderate rehabilitation program, including the single-room occupancy (SRO) program.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

(V) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965).

(VI) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act).

(ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(I) Section 236.

(II) Section 221(d)(3) or (d)(4) BMIR.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

Units that were previously receiving PBV assistance or HCV tenant-based assistance are not covered by this exception. (The statute provides that the units must have been receiving ''other'' project-based assistance provided by the Secretary in order to cover by the exception authority.)

Both existing units and units rehabilitated under the PBV program are eligible for this exception if the units meet the conditions outlined above. In addition, newly constructed units developed under the PBV program may also be excluded from the PHA program limitation, provided the newly constructed unit qualifies as a replacement unit as described below.

(2) *PBV New Construction Units that Qualify for the Exception as Replacement Housing.* For purposes of this notice, a PBV new construction unit must meet all of the following requirements in order to be a replacement unit and qualify for this exception to the program limitation:

(a) The unit which the PBV new construction unit is replacing (*i.e.,* the original unit) must have received one of the forms of HUD assistance or was subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above no more than 5 years from the date the PHA either (i) issued the RFP under which the PBV new construction project was selected or (ii) selected the PBV new construction project based on a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, the date of selection used to determine if the 5-year threshold has been met is the date of the PHA written notice of owner selection under 24 CFR 983.51(d)).

(b) The newly constructed unit is located on the same site as the unit it is replacing. An expansion of or modification to the prior project's site boundaries as a result of the design of new construction project is acceptable as long as a majority of the replacement units are built back on the site of the original public housing development and any units that are not built on the existing site share a common border with, are across a public right of way from, or touch that site.

(c) One of the primary purposes of the planned development of the PBV new construction project is or was to replace the affordable rental units that previously existed at the site, as evidenced by at least *one* of the following:

(i) Former residents of the original project are provided with a selection preference that provides the family with the right of first occupancy at the PBV new construction project when it is ready for occupancy.

(ii) Prior to the demolition of the original project, the PBV new construction project was specifically identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

HUD is specifically seeking comment on what changes HUD should consider making to the initial conditions set forth under this notice in order for a PBV new construction unit to qualify as replacement housing and the exception to the PBV program limitation. Please see the questions for comment section, below.

(3) *Unit size configuration and number of units for new construction and rehabilitation projects.* The unit size configuration of the PBV new construction project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the program limitation exception be applied to PBV new construction units that exceed the total number of covered units in the original project that the PBV units are replacing. For example, assume the PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the exception from the program limitation in this example would be 40 units, and the remaining 10 PBV units in the project would count against the program limitation.

These same policies apply in the case where the owner is rehabilitating the project under the PBV program and is changing the unit configuration and/or total number of units in the project as a result of the rehabilitation.

(4) *Applicability of PBV project selection requirements.* For owner proposals involving all of these PBV

properties (existing, rehabilitation, and new construction), the standard criteria for selection of projects and the units to which project-based assistance can be attached, including consistency with the PHA Plan, the goals of deconcentrating poverty and expanding housing and economic opportunities, site selection, and all civil rights requirements, are still in effect. Likewise, the requirements of HUD Notice PIH 2013–27 that concern the voluntary relinquishment by families of enhanced voucher assistance for PBV assistance remains in effect. The only difference is that the PBV units in these projects will not be included in determining if a PHA has exceeded its PBV program cap. These units are excluded from both the total number of units authorized under the PHA's ACC and the number of units committed to PBV in the program.

As noted above, the PHA is required to provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units (*i.e.,* identify the property and the covered program or programs under which the property was formerly assisted). The PHA submits the required information electronically to the HUD field office by sending an email to *pbvsubmission@hud.gov.* The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

D. Other Units Not Subject to the PBV Program Unit Calculation

In addition to the units listed under section C.2.C above, other units are not subject to the program limitation calculation and would be excluded in the total number of authorize units and the total number of PBV units currently committed to PBV that the PHA submits to the field office (in lieu of following the requirements of 24 CFR 983.6(b)).

(1) *RAD exception.* HUD waived the 20 percent limitation at section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6 for PBV units under the RAD demonstration. This waiver remains in effect, and, consequently, a PHA that continues to be exempted from submitting information on its PBV cap calculation to HUD when it is project-basing vouchers under RAD. Furthermore, RAD PBV units are excluded from both the total number of units under the ACC and the units committed to PBV when determining if the PHA has vouchers available to project-base under the program limit requirements.

(2) *HUD–VASH PBV Set-aside vouchers.* HUD has awarded vouchers specifically designated for project-based assistance out of the HUD–VASH appropriated funding made available from the FY 2016, FY 2015, FY 2014, FY 2013, FY 2011, and FY 2010 Appropriations Acts. Since these voucher allocations were specifically allocated for project-based assistance, HUD has determined that the PBV units supported by those vouchers should not count against the PHA's PBV program unit limitation as long as those vouchers remain under PBV HAP contract at the designated project. The Appropriations Acts funding these vouchers authorize the HUD Secretary, in consultation with the VA Secretary, to waive or specify alternative requirements for any provision of any statute or regulation that the HUD Secretary administers in connection with the use of those HUD–VASH funds (except for requirements related to fair housing, labor standards, and the environment), upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective delivery and administration of such voucher assistance. Accordingly, section 8(o)(13)(B) is waived for those HUD–VASH PBV vouchers.

This exception only applies to HUD–VASH PBV vouchers that were awarded to the PHA through the HUD–VASH PBV set-aside funding process. All other HUD–VASH vouchers, including those HUD–VASH vouchers that the PHA opts to project-base, are still subject to the PHA PBV program limitation, and would be included in the units authorized and units committed to PBV that the PHA submits to HUD under this document, which replaces the voucher funding information that was previously provided under 24 CFR 983.6(b).

(3) *Additional categories established by HUD by regulation.* Section 8(o)(B)(ii), as amended by HOTMA, further provides that the Secretary may, by regulation, establish additional categories for the exception to the PBV program unit limitation. HUD has not yet exercised this authority but may do so in the future.

For future PBV projects other than RAD, the PHA is required to provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units. The PHA submits the required information electronically to the HUD field office by sending an email to *pbvsubmission@hud.gov.* The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

Questions for Comment

1. Should HUD allow PHAs that are administering PBV units that would qualify under the additional 10 percent exception categories but were placed under HAP contract prior to the effective date of this notice count those units as excepted? This would potentially allow a PHA that was at the 20 percent limit to add new PBV units that do not fall under any of the exception categories, because counting the PBV units that were already under HAP under the new 10 percent exception authority would free up space under the regular 20 percent cap.

2. The new (o)(13)(B) further provides that the additional 10 percent exception may be applied to units that are difficult to use, as determined by the Secretary, and with respect to census tracts with a poverty rate of 20 percent or less. This document, for now, only applies the statutory exception provision to those units located in census tracts with poverty rates of 20 percent or less. What criteria should HUD use to define or determine the areas where vouchers are ''difficult to use'' for this exception category?

3. The statute allows the Secretary to issue regulations to create additional exception categories from the normally applicable PBV program limit, which could apply to the additional 10 percent authority or that could be exempted from the program limit entirely. What additional exception categories that should be included in the 10 percent authority? What other types of units should be exempted from the PBV program limit entirely?

4. This document sets out certain conditions that a PBV new construction unit must meet in order to be considered replacement housing and eligible for the exception to the PHA PBV program limitation. Are those conditions appropriate or should they be changed or expanded?

5. In light of the impact that additional exceptions and exemptions from the program limit will have on the number of vouchers available for tenant-based assistance under the HCV program, should HUD establish additional categories at all? What limits or requirements on project-basing, if any, should be placed on the use of this exception authority to ensure that the PHA has sufficient tenant-based assistance available for families to exercise their statutory right to move

from the PBV project with tenant-based assistance after one year of occupancy at the PBV project?

3. Changes to Income-Mixing Requirements for a Project (Project Cap) (§ 8(o)(13)(D) of 1937 Act)

This section overrides the PBV program regulations at 24 CFR 983.56(a) and 983.56(b)(1) and (2). This section also overrides §§ 983.262(c) and (d).

A. PBV Income-Mixing Project Cap, Generally

HOTMA amended the income-mixing requirement for an individual project found in section 8(o)(13)(D) of the 1937 Act. The limitation on the number of PBVs in a project is now the greater of 25 units or 25 percent of the units in a project. However, owners under current HAP contracts are still obligated by the terms of those HAP contracts with respect to the requirements that apply to the number of excepted units in a multifamily project. The owner must continue to designate the same number of contract units and assist the same number of excepted families as provided under the HAP contract during the remaining term of the HAP contract, unless the owner and the PHA mutually agree to change those requirements. For example, if an owner has a PBV HAP contract for a 20 unit project, and the HAP contract provides that 15 of those units were exempted from the 25 percent income mixing requirement because the units are designated for elderly families, the owner must continue to designate those units for occupancy by elderly families, notwithstanding the fact that the statutory limit on PBV has been increased to 25 units, unless the owner and the PHA mutually agree to change the terms of the assistance contract.

Except as provided below, the PBV HAP contract may not include units in excess of the greater of 25 units or 25 percent of the units in the project.

B. Exceptions to Project Cap

Units that are in one of the following categories are excluded from the 25 percent or 25-unit project cap on PBV assistance:

(1) Units exclusively serving elderly families (as such term is defined in 24 CFR 5.403).

(2) Units housing households eligible for supportive services available to all families receiving PBV assistance in the project. The project must make supportive services available to all assisted families in the project (but the family does not have to actually accept and receive the supportive service for the exception to apply to the unit). Families eligible for supportive services under this exception to the project cap would include families with a household member with a disability, among other populations. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project and designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify under the exception and the extent to which such services will be provided.

A PHA may not require participation in the supportive services as a condition of living in an excepted unit, although such services may be offered. In cases where the unit is excepted because of FSS supportive services or any other supportive services as defined in the PHA administrative plan, if a family at the time of initial tenancy was eligible for FSS supportive services and successfully completes its FSS contract of participation or the supportive services objective, the unit continues to count as an excepted unit for as long as the family resides in the unit even though the family is no longer eligible for the service.

However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently *is no longer eligible* for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the ineligible family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract (unless it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 983.207(a)).

(3) Projects that are in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.

The PHA may only refer qualifying families for occupancy of excepted units under (1) and (2) above.

C. Grandfathering of Certain Properties

The HOTMA amendments entirely eliminate the statutory exemption from a project cap for projects that serve disabled families and modify the supportive services exception. Previously, the statutory exception required that the family must be actually receiving the supportive services for the individual unit to be exempted from the income-mixing requirement. The new requirement provides that the project must make supportive services available to all assisted families in the project (but that the family does not have to actually accept and receive the supportive services for the exception to apply to the unit). However, projects that are using the former statutory exemptions will continue to operate under the pre-HOTMA requirements and will continue to renew their HAP contracts under the old requirements, unless the PHA and the owner agree by mutual consent to change the conditions to the HOTMA requirement. The PBV HAP contact may not be changed to the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (*e.g.,* excepted units at the project included units designated for the disabled, and changing to the HOTMA standard would result in those units no longer being eligible as an excepted unit unless the owner will make supportive services available to all assisted families in the unit.)

D. Projects Not Subject to a Project Cap

New language in section 8(o)(13)(D) exempts certain types of units receiving project-based voucher assistance from having a project cap entirely. These are PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD. This exception to the project cap may only be applied to projects that were not already under HAP contract on the effective date of this document. The exception may not be applied retroactively to projects under HAP contract on the effective date of this notice or subsequently applied at the extension of those HAP contracts.

(1) *Exception requirements.* For purposes of this document, the unit must meet the following conditions in order to qualify for this exception:

(a) The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice, and

(b) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project without competition, the unit met at least one of the two following conditions:

(i) The unit received one of the following forms of HUD assistance:

(I) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).

(II) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the moderate rehabilitation program, including the SRO program.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

(V) The Rent Supplement program (section 101 of the Housing and Urban Development Act of 1965).

(VI) Rental Assistance Program (section 236(f)(2) of the National Housing Act); or

(ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(I) Section 236.

(II) Section 221(d)(3) or (d)(4) BMIR.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

Units that were previously receiving PBV assistance are not covered by this exception. The statute provides that the units must have been receiving ''other'' project-based assistance provided by the Secretary in order to be covered by the exception authority.

For proposals involving these properties, the standard criteria for selection of projects and the units to which PBV assistance can be applied are still in effect. The only difference is that any PBV assistance provided to these properties may be used to project base up to 100 percent of the units in the project.

Both existing units or units rehabilitated under the PBV program are eligible for this project cap exception if the units meet the conditions outlined above. In addition, newly constructed units developed under the PBV program may also be excluded from the PHA program limitation, provided the newly constructed unit qualifies as a replacement unit as described below.

(2) *PBV New Construction Units that Qualify for the Exception as Replacement Housing.* For purposes of this document, the PBV new construction unit must meet the following requirements in order to be a replacement unit and qualify for the project cap exception (these are the same conditions that apply for units to qualify as replacement units for purposes of the exception to the PBV Program unit limit under section C.2.C of this document above):

(a) The unit which the PBV new construction unit is replacing (*i.e.,* the original unit) must have received one of the forms of HUD assistance or was subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above within 5 years from the date the PHA either (i) issued the RFP under which the PBV new construction project was selected or (ii) selected the PBV new construction project under a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, the date of selection is the date of the PHA notice of owner selection (24 CFR 983.51(d)).

(b) The newly constructed unit is located on the same site as the unit it is replacing. (An expansion of or modification to the prior project's site boundaries as a result of the design of new construction project is acceptable as long as new project is generally located at the same site as the original project for purposes of this requirement.)

(c) One of the primary purposes of the planned development of the PBV new construction project is or was to replace the affordable rental units that previously existed at the site, as evidenced by at least *one* of the following:

(i) Former residents of the original project are provided with a selection preference that provides the family with the right of first occupancy at the PBV new construction project when it is ready for occupancy.

(ii) Prior to the demolition of the original project, the PBV new construction project was specifically identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

(3) *Unit size configuration and number of units.* The unit size configuration of the PBV new construction project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the project cap exception be applied to PBV new construction units that exceed the total number of covered units in the original project that the PBV units are replacing. For example, assume the PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the exception from the project cap in this example would be 40 units, and the remaining 10 PBV units would be subject to the project cap and would need to qualify for an exception on the basis of another exception category.

These same policies apply in the case where the owner is rehabilitating the project under the PBV program and is changing the unit configuration and/or total number of units in the project as a result of the rehabilitation.

Questions for Comment

1. What other standards should HUD require for supportive services under B.2, above?

2. The Secretary has authority to define areas where tenant-based vouchers are ''difficult to use.'' This document, for now, only applies the statutory provision of census tracts with poverty rates of 20 percent or less. What are some other criteria that HUD should include? For example, other possible criteria include rental vacancy rates, voucher success rates, high cost areas as captured by the difference between the zip code level small area FMR and the metropolitan-wide FMR, or alternative measures of low-poverty areas.

3. Are there additional properties formerly subject to federal rent restrictions or receiving rental assistance from HUD that should be exempted from a project cap?

4. The statute allows HUD to impose additional monitoring and requirements on projects that project-base assistance for more than 40 percent of the units. How can PHAs ensure that this increase in PBV units will not hamper mobility efforts and moves to opportunity areas?

4. PBV Contract Terms (§ 8(o)(13)(F) and (G) of 1937 Act and §§ 106(a)(4) and (5) of HOTMA)

A. Initial Term of HAP Contract and Extension of Term

The initial HAP Contract term may now be of a period of up to 20 years (instead of the prior 15-year limitation). The length of the term of the initial HAP contract for any HAP contract unit may not be less than one year nor more than 20 years (instead of the prior 15-year limitation on the initial term of the HAP contract). In addition, the PHA may agree to enter into an extension (at the time of the initial HAP contract execution or any time before the expiration of the contract, for an additional term of up to 20 years (as opposed to the prior 15-year limitation on the term of the contract extension). A HAP contract extension may not exceed 20 years. The PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively.

PHAs and owners with HAP contracts that are still in the initial term may extend the initial term up to a maximum initial term of 20 years by mutual consent, and then may subsequently agree to extend the contract for up to 20 years. The maximum term of the HAP contract in that instance (initial term and subsequent extension) would be 40 years. PHAs and owners with HAP contracts that are no longer in the initial term may mutually agree to extend the HAP contract for a total extension term of 20 years. The maximum term of the HAP contract in that case would be 20 years plus the number of years that constituted the initial term of the HAP contract.

If the project in question is a PHA-owned project, any change in the initial term and any subsequent extension is also subject to the approval of the independent entity.

This section overrides 24 CFR 983.205(a) and (b) only with respect to the length of the initial term and the extension of the term of the HAP contract. Otherwise, all of the other requirements of those regulations remain in effect, including the requirements related to PHA-owned units.

B. Priority of Assistance Contracts

The new section 8(o)(13)(F)(i)(I) requires PHAs, in times of insufficient funding, to first take all cost-savings measures prior to failing to make payments under existing PBV HAP contracts (*i.e.,* terminating the HAP contract). If the PHA has taken all cost-savings measures and still has insufficient funding to make HAPs, it is left up to the discretion of the PHA to choose to terminate HCV or PBV assistance first. The list of cost-savings measures that must be taken prior to terminating assistance contracts are found in PIH Notice 2011–28.[1]

C. Biennial Inspection Requirements

The new language in section 8(o)(13)(F)(i)(II) of the 1937 Act is a change that clarifies the frequency of inspection requirement for PBV projects to those found in paragraph (8), which allows for biennial as opposed to annual inspections. The language in paragraph (13)(F)(i)(II) merely clarifies that for PBV assistance, biennial inspections may be conducted using a sample of units. The PBV regulations at 24 CFR 983.103 were revised under the final rule entitled, ''Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs,'' published in the **Federal Register** on March 8, 2016, at 81 FR 12353. This rule amended regulations to reflect the biennial inspection requirement for PBV and that a random sampling of at least 20 percent of the PBV units in each building may be used to fulfill that biennial inspection requirement.

D. Additional Units Without Competition

The new language in section 8(o)(13)(F)(ii) allows PHAs and owners to amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements (see 24 CFR 983.51(b)) for those added PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and the individual project caps, found in sections 8(o)(13)(B) and (D) of the 1937 Act, respectively. Furthermore, prior to attaching additional units without competition, the PHA must submit to the local field office the information described in section C.2.A above, which pertains to demonstrating the PHA is able to project-base additional units without exceeding the PHA program limitation on PBV units. PHAs must also detail their intent to add PBV units in this manner in their administrative plan, along with their rationale for adding PBVs to this specific project. This provision overrides the restriction in 24 CFR 983.207(b) that additional units may only be added to the HAP contract during the three-year period immediately following execution of the HAP contract. All of the other requirements under § 983.207(b) continue to apply.

E. Additional Contract Conditions

The new 8(o)(13)(F)(IV) allows the PBV HAP contract to have additional conditions, including conditions related to continuation, termination, or expiration. HUD is not adding any additional conditions to the PBV HAP contract at this time.

The section further requires that HAP contracts specify that, upon termination or expiration of a contract that is not extended, a family living at the property is entitled to receive a tenant-based voucher (the voucher that was previously providing project-based assistance for the family in the PBV project). The PHA must provide the family with a voucher and that family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance if the unit complies with inspection requirements and rent reasonableness requirements. The family must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount if the unit rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance (for example, the rent is reasonable, unit meets HQS, etc.). The owner may not terminate the tenancy of a family that exercises its right to remain except for a serious or repeated lease violation or other good cause.

Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

The statutory owner notice requirements related to the contract termination or expiration at 24 CFR 983.206 continue to apply to the PBV program. If the owner fails to provide timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of the rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of the rent. For families that wish to remain at the property, the HCV tenant-based assistance would not commence until the owner's required notice period ends.

Question for Comment

Are there additional parameters HUD should consider placing on PHAs and owners when amending HAP contract terms related to continuation, termination or expiration?

5. Preference for Families Who Qualify for Voluntary Services (§ 8(o)(13)(J) of 1937 Act)

Section 106(a)(7)(A) and (C) of HOTMA makes changes to section 8(o)(13)(J) of the 1937 Act to allow a PHA to allow owners with PBV contracts to create and maintain site-based waiting lists. HUD is not implementing these provisions at this time, but instead will pursue rulemaking.

However, section 106(a)(7)(B) of HOTMA provides that a PHA may establish a selection preference for families who qualify for voluntary

services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan. This is a change from the current regulatory requirement at 24 CFR 983.251(d), that provides in selecting families, PHAs may give preference to disabled families who need the services offered at a particular project in accordance with the limits under the regulatory paragraph, regardless of whether the family qualifies for the supportive service and will actually be able to receive the supportive services. Note, however, that the prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply. This document provides PHAs with additional guidance and information on how to establish such preferences.

A. Selection Preference for Families Who Qualify for Voluntary Services

(1) Consistency With Nondiscrimination and Civil Rights Statutes and Requirements

Both the owner and the PHA are responsible for ensuring that the proposed preference is consistent with all applicable Federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and HUD's Equal Access Rule. See 24 CFR 5.105(a). It is also the responsibility of the PHA to ensure that an owner is carrying out the PHA's program in a manner consistent with Section 504. There are unique requirements regarding the selection preference when considered in the context of providing services for individuals with disabilities. In particular, the statutory language permitting a preference for individuals who qualify for voluntary services, including disability-specific services, must be read consistent with Federal laws that provide protections against discrimination based on disability and segregation of individuals with disabilities as well as the affirmative requirement that programs, services, and activities be provided in the most integrated setting appropriate to the needs of individuals with disabilities. Among these requirements, PHAs and owners, and in certain circumstances services providers, may not impose eligibility criteria that discriminate on the basis of disability, and must comply with the integration mandate.

The HOTMA amendments permit a PHA to establish a preference based on who qualifies for voluntary services, including disability-related services, offered in conjunction with the assisted units. Consistent with Federal nondiscrimination laws, qualifications or eligibility criteria, including for voluntary services, cannot be applied in a discriminatory manner. In particular, PHAs, owners, and service providers cannot impose additional admissions criteria that discriminate or are applied in a discriminatory manner. Any individual who is qualified for the services must be able to receive the preference, including qualified individuals with disabilities, regardless of disability type.

Voluntary services can consist of a variety of activities, including for example, meal service adequate to meet nutritional needs, housekeeping assistance, personal assistance, transportation services, case management, child care, education services, employment assistance and job training, counseling services, life skills training, and other services designed to help the recipient live in the community as independently as possible. Voluntary services can also include disability-specific services, such as mental health services, assistance with activities of daily living, personal assistance services, outpatient health services, and the provision of medication, which are provided to support a person with a disability. Such services may also include, for example, services provided by State Medicaid programs to promote community based settings for individuals with disabilities.

The revised statute permits such a preference to be established if it is consistent with the PHA plan. As part of the PHA plan review process, the Office of Fair Housing and Equal Opportunity, in consultation with the Office of General Counsel, will review each proposed preference for consistency with fair housing and civil rights requirements. As part of this process, HUD may request the PHA or owner provide any additional documentation necessary to determine consistency with the PHA plan and all applicable federal fair housing and civil rights requirements. In developing any proposed targeted preferences, PHAs must comply with the requirements outlined in PIH Notice 2012–31 and HUD's *Statement on the Role of Housing in Accomplishing the Goals of Olmstead.*

(2) Preferences for Disability-Specific Services

A PHA or owner may offer a preference for individuals who qualify for voluntary services offered in connection with the units. Such services may or may not include disability-specific services. For example, a preference may be only for persons who qualify for employment assistance, or for transportation services, or a preference may be for persons who qualify for either housekeeping assistance, case management, or outpatient health services. If a PHA or owner decides, however, that the only preference that will be offered is based on qualification for a disability-specific service, it is especially important for the entity to consider how to implement this preference consistent with Section 504 and the ADA, and their implementing regulations.

Further, the statutory language allowing an agency or owner to give preference to families who qualify for voluntary services, including disability-specific services, must be implemented consistent with the integration mandate under Section 504 and Title II of the ADA. 24 CFR 8.4(d); 28 CFR 35.130(d). The integration mandate, as mentioned earlier in the notice, requires that covered entities ensure persons with disabilities can interact with persons without disabilities to the fullest extent possible. HUD has provided guidance on what the Department considers integrated settings in the housing context:

''Integrated settings also enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities. Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.'' [2]

By contrast, HUD has stated that segregated settings are ''occupied exclusively or primarily by individuals with disabilities.'' [3]

[2] Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead, *http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.*

[3] The U.S. Department of Justice provides additional relevant guidance on the application of the integration mandate under Title II and Section 504 in its Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C., *https://www.ada.gov/olmstead/*

In addition, requirements under the Fair Housing Act, including the regulatory obligation under 24 CFR 100.70(c)(4) regarding dispersion of units occupied by individuals with disabilities and not assigning individuals with disabilities to a particular section or floor of a building, continue to apply.

As more states implement requirements under Title II of the ADA and *Olmstead,* which are focused on transitioning individuals from institutional and other segregated settings into integrated community-based settings, as well as assisting individuals at risk of institutionalization from entering such settings, there is an increased need for affordable, integrated, and accessible housing opportunities. To assist with these concerns, PHAs or owners may want to coordinate with other relevant agencies implementing *Olmstead* planning and transition planning related to the Centers for Medicare and Medicaid Services (CMS)' Home and Community-Based Setting (HCBS) regulation in their State. HUD encourages the PHA or owner to consult with the relevant agencies who make determinations as to whether the housing qualifies as a HCBS under the CMS regulations to allow for State Medicaid funding to be accessed at the site. The CMS regulations specify the qualities that HCBS must have in order to receive funding, including that the setting is integrated.

B. Informed Client Choice and Self-Determination

HUD emphasizes the importance of client choice, independence, and self-determination in implementing this provision. Consistent with the statutory language, as well as federal fair housing and civil rights requirements, participation in services is voluntary. Accordingly, the existing regulatory language at 24 CFR 982.251(d)(2) stating that residents with disabilities shall not be required to accept the particular services at the project continues to apply. Program beneficiaries who receive housing because of the preference still have the ability to receive voluntary services from a service provider of their choosing, or choose not to participate in services at all. Similarly, an individual who chooses to no longer participate in a service or who no longer qualifies for services he or she did qualify for at the time of initial occupancy cannot subsequently be denied a continued housing opportunity because of this changed circumstance. A PHA or owner also cannot determine that a participant's needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs

C. Additional Requirements

- PHAs and project owners must also ensure that their programs are operated in a manner to affirmatively further fair housing under the Fair Housing Act, 42 U.S.C. 3608, and related authorities, such as the Affirmatively Furthering Fair Housing Rule, 24 CFR 5.150 *et seq.*
- Housing providers cannot use a preference to impose additional criteria that intentionally discriminates against members of any protected class or may result in a discriminatory effect. For recent HUD guidance on discriminatory effects under the Fair Housing Act, see Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, *https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf;* Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, *http://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf.*
- PHAs and owners must also ensure their implementation of preferences and other operations comply with other Federal nondiscrimination requirements. This includes, among other requirements, providing reasonable accommodations for persons with disabilities, auxiliary aids and services necessary to ensure effective communication with individuals with disabilities, which includes ensuring that information is provided in appropriate accessible formats as needed, *e.g.,* Braille, audio, large type, accessible web-based applications, assistive listening devices, and sign language interpreters, and taking reasonable steps to maximize the utilization of accessible units (units accessible to persons with mobility impairments and units accessible to persons with hearing or vision impairments) by eligible individuals who need the accessibility features of the particular unit. For additional guidance on permissible PHA preferences, please see the *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead, http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf,* and PIH Notice 2012–31, *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-31.pdf.* In addition, HUD anticipates issuing additional guidance on the application of HOTMA, including fair housing guidance.

6. Attaching PBVs to Structures Owned by PHAs (§ 8(o)(13)(N) of 1937 Act)

The new section 8(o)(13)(N) allows PHAs to attach PBVs to projects in which the PHA has an ownership interest or has control of, without following a competitive process, in cases where the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The PHA's ownership interest does not have to meet the definition of the term ''owned by a PHA'' established by section 105 of HOTMA. For purposes of this section, an ownership interest means that the PHA or its officers, employees, or agents are in an entity that holds any such direct or indirect interest in the building, including, but not limited to an interest as: titleholder; lessee; a stockholder; a member, or general or limited partner; or a member of a limited liability corporation. These PBV projects are still subject to all other applicable PBV requirements.

In order to be subject to this non-competitive exception, the PHA must be planning rehabilitation or construction on the project with a minimum of $25,000 per unit in hard costs. The PHA must detail in its PHA administrative plan what work it plans to do on the property or site and how many units of PBV it is planning on adding to the site.

This section overrides the regulatory requirements for selection of PBV proposals at 24 CFR 983.51(b).

Questions for Comment

1. Is the $25,000 per unit threshold appropriate for this exception from the competitive process? HUD chose the $25,000 threshold based on the findings of the 2010 Capital Needs study on the average existing capital need per public housing unit, but is seeking public comment on other possible dollar thresholds or methodologies for determining whether a PHA's rehabilitation or construction projects qualifies as an initiative to improve, develop, or replace a public housing property or site.

2. The law provides that this section is applicable to a PHA that has an ownership interest in or has control of the project. Are there examples or cases where a PHA may have control of a project but would not have any ownership interest in the project that HUD should address in future implementing guidance or when

q&a_olmstead.htm and its Olmstead compliance and enforcement efforts, *https://www.ada.gov/olmstead/index.htm.*

conforming the regulation to these provisions?

7. Project-Basing Special-Purpose Vouchers (§ 8(o)(13)(O) of 1937 Act)

HOTMA added a new section 8(o)(13)(O) to the 1937 Act, allowing PHAs to project-base Family Unification Program (FUP) and HUD–VASH vouchers without requiring additional HUD approval. This document serves as official notice that this statutory change is effective as of *April 18, 2017.* This document also provides additional information on how PHAs may project-base HUD–VASH or FUP vouchers.

All normally applicable PBV requirements under 24 CFR part 983 or implemented through this document apply to project-based FUP and HUD–VASH vouchers, and PHAs must continue to meet all of their obligations to assist the required number of HUD–VASH and FUP families for their HCV programs.

A. HUD–VASH Vouchers

The most current requirements for the HUD–VASH program may be found in PIH Notice 2015–10. In that notice, HUD requires that PHAs wishing to project-base HUD–VASH vouchers must meet certain requirements in order to do so. Those PBV requirements are now superseded by the statutory amendments made by HOTMA.

However, statutory authorization for the HUD–VASH program, including section 8(o)(19) of the 1937 Act and the FY 2016 appropriations Act,[4] requires that PHAs conduct their HUD–VASH programs in conjunction with a Veterans Administration Medical Center (VAMC), which must make supportive services available to individuals receiving HUD–VASH assistance. Therefore, in order to meet the requirement that the PHA provide rental assistance in conjunction with a VAMC's ability to provide supportive services, PHAs wishing to project-base HUD–VASH vouchers must consult with their partner VAMC to ensure that the VAMC will be able to continue to provide supportive services should the PHA project-base its HUD–VASH vouchers. Furthermore, PHAs that received HUD–VASH PBV set-aside funds must continue to comply with all of the terms and conditions that apply to those vouchers.

B. Family Unification Program (FUP) Vouchers

HOTMA also allows PHAs to project-base vouchers awarded to the PHA for the FUP program without further approval from HUD. However, HUD encourages PHAs wishing to do so to consider whether project-basing such vouchers yields significant benefits, whether doing so would limit the ability of youth to use such vouchers, and whether project-basing FUP vouchers would allow the PHA to serve the populations eligible for FUP vouchers in such a way as to keep the units filled. A PHA project-basing FUP vouchers may limit the project-based vouchers to one category of FUP eligible families, such as making the project-based vouchers exclusively available for FUP-youth.

Questions for Comment

1. Is there an advantage to grouping FUP families (either FUP families, FUP youth, or all FUP families) in one project (as opposed to interspersed with other PBV units in a PHA's portfolio)?

2. How would the PHA administer waitlists and preferences to manage FUP availability across multiple waitlists?

3. How do PHAs ensure mobility access with a time-limited voucher (*i.e.,* FUP voucher that is assisting a FUP-eligible youth)?

4. How do PHAs ensure full occupancy of PBV units with time-limited vouchers and limited numbers?

D. Using Vouchers in Manufactured Housing (HOTMA § 112)

Section 112 of HOTMA amends section 8(o)(12) of the 1937 Act with respect to the use of voucher assistance provided to families that are owners of manufactured housing. Prior to the HOTMA amendment, voucher assistance payments on behalf of owners of manufactured housing under section 8(o)(12) could only be made to assist the manufactured home owner with the rent for the space on which the manufactured home is located (the manufactured home space). Section 112 expanded the definition of ''rent'' for manufactured home owners receiving voucher assistance to also include other housing expenses, specifically the monthly payments made by the family to amortize the cost of purchasing the manufactured home (including any required insurance and property taxes) and tenant-paid utilities.

The use of housing assistance payments to assist a manufactured home owner with the rent of the manufactured home space and other eligible expenses continues to be a special housing type under 24 CFR part 982 subpart M. In general, the PHA is not required to permit families to use any of the special housing types and may limit the number of families using special housing types. However, the PHA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

For manufactured home owners that are currently receiving HCV assistance to rent the manufactured home space in accordance with 24 CFR 982.622 through 982.624, the PHA must implement the HOTMA changes to the calculation of ''rent'' and the amount of subsidy effective on the first regular reexamination following the effective date of this document, or no later than one year after the effective date of this document (if the first regular examination falls after that date). The new subsidy calculation shall apply from that point on during the term of the HAP contract.

24 CFR 982.622 and 982.624 continue to apply for HCV assistance provided on behalf of a manufactured home owner that is renting the manufactured home space. Section 982.623, which covers how the housing assistance payment is calculated, is no longer applicable. Instead, if a PHA chooses to provide voucher assistance to a manufactured home owner who is renting the manufactured home space, the monthly housing assistance payment is calculated as the lower of:

(a) The PHA payment standard minus the total tenant payment; or

(b) The rent of the manufactured home space (including other eligible housing expenses) minus the total tenant payment.

The PHA payment standard is determined in accordance with 24 CFR 982.505 and is the payment standard used for the PHA's HCV program. The payment standard for the family is the lower of the payment standard amount for the family unit size or the payment standard amount for the size (number of bedrooms) of the manufactured home. The separate fair market rent (FMR) for a manufactured home space is no longer applicable to establishing the payment standard for a manufactured homeowner who is renting the manufactured home space since the payment is assisting the homeowner with other housing expenses. The PHA payment standard will be based on the applicable HUD published FMR for the area in which the manufactured home space is located.

The rent of the manufactured home space (including other eligible housing expenses) is the total of:

(a) The rent charged for the manufactured home space;

[4] Division L, Title II of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, approved December 18, 2015).

(b) owner maintenance and management charges for the space;

(c) the monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and

(d) the applicable allowances for tenant paid utilities.

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

The total amount for the rent of the manufactured home space and the other eligible expenses is reported in PIC on the HUD–50058 on line 12k, even though it includes amounts in addition to the total monthly rent payable to the owner under the lease for the contract unit.

The utility allowances are the applicable utility allowances from the PHA utility allowance schedule under 24 CFR 982.517 and 982.624.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the family, lender or utility company.

HOTMA further provides that the PHA may choose to make a single payment to the family for the entire monthly assistance amount rather than making the HAP directly to the owner of the manufactured home space the family is renting. HUD is not implementing this option at this time but is seeking comment on how to best implement this option, including how to best ensure the PHA may still take enforcement action when necessary against an owner who fails to fulfill his or her responsibilities under the HCV program.

Question for Comment

When implementing the option to allow the PHA to make a single HAP directly to the family, how would HUD ensure that a PHA take enforcement action against an owner of a manufactured home space who fails to fulfill his or her responsibilities under the HCV program? Would a manufactured home park owner be willing to enter into a contract under which he or she would receive no direct payment?

III. Environmental Impact Certification

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on *www.regulations.gov.*

Dated: January 10, 2017.

Nani Coloretti,

Deputy Secretary.

[FR Doc. 2017–00911 Filed 1–17–17; 8:45 am]

BILLING CODE 4210–67–P

10/26/18 PIH 2018-18; Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:
Public Housing and Section 8 Program Administrators, Public Housing Hub Office Directors; Public Housing Resident Management Corporations; Resident Councils; Applicants and Participants of Public Housing, Housing Choice Voucher, Section 8 Moderate Rehabilitation, and Project-Based Certificate and Voucher Programs

Notice PIH 2018–18

Issued: October 26, 2018

Expires: This notice remains in effect until amended, superseded or rescinded.

Cross References:
notice PIH 2017-12
24 CFR 5.233
24 CFR 5.236
24 CFR 908.101

SUBJECT: Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System

1. Purpose. This notice adds a new section incorporating the Income Validation Tool (IVT) Report. This report will facilitate and enhance public housing agencies (PHAs) identification of tenant unreported or underreported income information during interim and regular reexaminations. Deployment of the IVT began July 17, 2018, and will conclude December 4, 2018. The IVT will provide projections of discrepant income for wages, unemployment compensation and Social Security Administration (SSA) benefits pursuant to HUD's data sharing agreements with the Department of Health and Human Services (HHS) using the National Directory of New Hires (NDNH) database, and the SSA. This notice supersedes notice PIH 2017-12.

2. Applicability. This notice applies to the HUD-PIH rental assistance programs: Public Housing, Section 8 Moderate Rehabilitation, Project-Based Voucher, Project-Based Certificate, and Housing Choice Voucher (HCV) Programs.

3. Background. On December 29, 2009, HUD issued the final rule entitled *Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System-Amendments (74 FR 68924)*, which requires PHAs to use the EIV system in its entirety to verify tenant employment and income information during mandatory reexaminations of family composition and income in accordance with 24 CFR 5.233; and reduce administrative and subsidy payment errors in accordance with 24 CFR 5.236 and other administrative guidance issued by HUD.

Using EIV as an upfront income verification (UIV) technique will be valuable in validating tenant-reported income during interim and annual reexaminations of family income; as well as streamlining the income verification process. This will result in less administrative burden in complying with third party verification requirements. Additionally, EIV will help to identify and cure inaccuracies in housing subsidy determinations, which will benefit PHAs, tenants, and taxpayers by ensuring that the level of benefits provided on behalf of families is proper and will prevent fraud and abuse within Public and Indian Housing (PIH) rental assistance programs.

4. Effective Date. This notice is effective as of the issuance date.

5. HUD Regulation. 24 CFR 5.233. Since January 31, 2010, all PHAs have been required to use the EIV system in its entirety. This means that PHAs must use all features of the EIV system to:

a. Verify tenant employment and income information during interim and mandatory reexaminations of family composition and income in accordance with 24 CFR 5.236, and other HUD administrative guidance; and
b. Reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

6. What is the EIV System? The EIV System is a web-based application, which provides PHAs with employment, wage, unemployment compensation and social security benefit information for tenants who participate in the Public Housing and various Section 8 programs under the jurisdiction of the PIH. This system is available to all PHAs nationwide. Information in EIV is derived from computer matching programs initiated by HUD with the SSA and the HHS, for all program participants with valid personal identifying information (name, date of birth (DOB), and social security number (SSN)) reported on the form HUD-50058.

What is the IVT Report? The IVT Report is a new report that replaces the current Income Discrepancy Report under the verification reports link in EIV. This report will facilitate and enhance PHA identification of tenant unreported or underreported income during interim and regular reexaminations. The IVT will be updated monthly and provide a comparison between tenant reported income and income information previously reported on the form HUD-50058. It will include any discrepant income information specifically derived and reported from HUD's data sharing agreements with HHS-NDNH and the SSA. The IVT will also provide income and wage, unemployment compensation and SSA benefit information. HUD staff and PHA personnel will be able to search a comprehensive database comprised of several screens that will include income information for Heads of Household and family members where there may be discrepancies in family reported income and employer reported information. During reexamination, or other significant contacts with tenant families, PHAs will see any reported discrepancies, determine the degree of tenant underreporting or misreporting of income information and take action in accordance with their policies to resolve the identified discrepancies.

All PHAs are required to review the EIV Income and Former Tenant Search reports prior to admission of each family. PHAs are required to review the Income and IVT reports during mandatory and interim reexaminations of family income and/or composition to reduce tenant under reporting of income and improper subsidy payments. EIV is classified as an UIV technique (or automated written third-party verification), which helps to identify income sources and/or amounts that the tenant may not have disclosed. This UIV technique, in many instances, will reduce the need to mail or fax third party verification request forms to an income source. EIV also provides various reports to assist PHAs with the following:

a. Identifying tenants whose reported personal identifiers do not match the SSA database
b. Identifying tenants who need to disclose an SSN;
c. Identifying tenants whose reported personal identifiers do not match the SSA database;
d. Identifying tenants who may not have reported complete and accurate income information;
e. Identifying tenants who have started a new job;
f. Identifying tenants who may be receiving duplicate rental assistance;
g. Identifying tenants who are deceased and possibly continuing to receive rental assistance; and
h. Identifying former tenants of PIH rental assistance programs who voluntarily or involuntarily left the program and have a reportable adverse status and/or owe money to a PHA or Section 8 landlord.

7. How to obtain access to the EIV System. All PHA staff (including PHA-hired management agents), who have a need to access the EIV system, are required to complete and submit the EIV Access Authorization Form & Rules of Behavior and User Agreement to their designated EIV Coordinator in the local HUD office.

The form is available online at: https://www.hud.gov/sites/documents/DOC_10866.PDF

The user's access must be approved by the PHA Executive Director or designee for the local HUD office to process all EIV access requests. Individuals who will not directly access the EIV system but will have access to the EIV data in printed or electronic form also are required to complete the EIV Access Authorization Form & Rules of Behavior and User Agreement and maintain it on file (do not submit the form to the local HUD office).

8. Verification Hierarchy and Techniques. PHAs should begin with the highest level of verification techniques.

All verifications, regardless of technique, require the PHA to review the IVT information at the time of reexamination and for multiple subsidy payments. PHAs are required to review the EIV Former Tenant and Existing Tenant Reports for any SSA matches involving another PHA or a Multi-family entity and follow-up on any issues identified. The PHA is required to maintain the report and documentation of any follow-up in the tenant file. If the tenant is a new admission to the PHA, and a match is identified at a Multi-family property, the PHA must report the program admission date to the Multi-family property and document the notification in the tenant file.

PHAs also need to obtain an Income Report for each household. The PHA is required to maintain

the Income Report in the tenant file along with the form HUD-50058 and other supporting documentation to support income and rent determinations for all interim and mandatory reexaminations of family income and composition. If the Income Report does not contain any employment and income information for the family, the PHA should attempt the next lower level verification technique, as noted in the below chart.

Exhibit 1: Verification Hierarchy and Techniques

Level	Verification Technique	Ranking
6	**Upfront Income Verification UIV),** using HUD's Enterprise Income Verification (EIV) system and the **Income Validation Tool (IVT)** (not available for income verifications of new applicants)	**Highest** (Mandatory)
5	**Upfront Income Verification (UIV)** using non-HUD system	**Highest** (Optional)
4	**Written third Party Verification**	**High** (Mandatory to supplement EIV-reported income sources and when EIV has no data; Mandatory for non-EIV reported income sources; Mandatory when tenant disputes EIV-reported employment and income information **and** is unable to provide acceptable documentation to support dispute.)
3	**Written Third Party Verification Form**	**Medium-Low** (Mandatory if written third party verification documents are not available or rejected by the PHA; and when the applicant or tenant is unable to provide acceptable documentation)
2	**Oral Third-Party Verification**	**Low** (Mandatory if written third party verification is not available)
1	**Tenant Declaration**	**Low** (Use as a last resort when unable to obtain any type of third-party verification)

Note: This verification hierarchy applies to income determinations for applicants and participants. However, EIV is not available for verifying income of applicants. Image 1 screenshot of Verification Hierarchy and Techniques illustrates six levels of verification starting with 6 as the highest category of Upfront Income Verification using HUD's EIV system, then 5 Upfront Income Verification (UIV) using non-HUD system, 4 Written Third-Party Verification, 3 Written Third Party Verification Form, 2 Oral Third-Party Verification and 1 Tenant Declaration.

Verification Technique Definitions

Third-Party Verification Techniques

Upfront Income Verification (UIV) (Level 6/5): The verification of income before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals.

It should be noted that the EIV system is available to all PHAs as a UIV technique. PHAs are encouraged to continue using other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to validate tenant-reported income.

Written Third Party Verification (Level 4): An original or authentic document generated by a third-party source dated either within the 60-day period preceding the reexamination or PHA request date. Such documentation may be in the possession of the tenant (or applicant) and is commonly referred to as tenant-provided documents. It is the Department's position that such tenant-provided documents are written third party verification since these documents originated from a third-party source. The PHA may, at its discretion, reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

Examples of acceptable tenant-provided documentation (generated by a third-party source) include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Current acceptable tenant-provided documents must be used for income and rent determinations.

The PHA is required to obtain at a minimum, two current and consecutive pay stubs for determining annual income from wages. For new income sources or when two pay stubs are not available, the PHA should project income based on the information from a traditional written third-party verification form or the best available information.

> **Note:** Documents older than 60 days (from the PHA interview/determination or request date) are acceptable for confirming effective dates of income.

Written Third Party Verification Form (Level 3): This is also known as traditional third-party verification. A standardized form to collect information from a third-party source. The form is completed by the third party by hand (in writing or typeset). PHAs send the form directly to the third-party source by mail, fax, or email.

It is the Department's position that the administrative burden and risk associated with use of the traditional third-party verification form may be reduced by PHAs relying on acceptable documents that are generated by a third party, but in the possession of and provided by the tenant (or applicant). Many documents in the possession of the tenant are derived from third party sources (i.e. employers, Federal, State and/or local agencies, banks, etc.).

The Department recognizes that third party verification request forms sent to third party sources often are not returned. In other instances, the person who completes the verification form may provide incomplete information; or some tenants may collude with the third-party source to provide false information; or the tenant intercepts the form and provides false information.

The Department requires PHAs to rely on documents that originate from a third-party source's computerized system and/or database, as this process reduces the likelihood of incorrect or falsified information being provided on the third-party verification request form. The use of acceptable tenant-provided documents, which originate from a third-party source, will improve the integrity of information used to determine a family's income and rent and ultimately reduce improper subsidy payments. This verification process also will streamline the income verification process.

Oral Third-Party Verification (Level 2): Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique or identified by the family, via telephone or in-person visit. PHA staff should document in the tenant file, the date and time of the telephone call (or visit to the third party), the name of the person contacted and telephone number, along with the confirmed information.

This verification method is commonly used when the independent source does not respond to the PHA's faxed, mailed, or e-mailed request for information in a reasonable time frame, e.g., ten (10) business days.

Non-Third-Party Verification Technique

Tenant Declaration (Level 1): The tenant submits an affidavit or notarized statement of reported income and/or expenses to the PHA. This verification method should be used as a last resort when the PHA has not been successful in obtaining information via all other verification techniques. When the PHA relies on tenant declaration, the PHA must document in the tenant file why third-party verification was not available.

Exceptions to Third Party Verification Requirements

HUD is aware that in some situations, third party verification is not available for a variety of reasons. Oftentimes, the PHA may have made numerous attempts to obtain the required verifications with no success, or it may not be cost effective to obtain third party verification of income, assets, or expenses, when the impact on total tenant payment is minimal. In these cases, the PHA is **required to document in the family file the reason(s) why third-party verification was not available.**

The exception to third party verification can be found at 24 CFR 960.259(c)(1) and §982.516(a)(2), which state in part**,** "…The PHA must obtain and document in the family file third party verification of the following factors or **must document in the file why third-party verification was not available.**"

9. Third-party verification requirements. In accordance with 24 CFR 960.259(c)(1) and 24 CFR 982.516(a)(2) for the Public Housing and the HCV programs, respectively, the PHA must obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available: (i) reported family annual income; (ii) the value of assets; (iii) expenses related to deductions from annual income; and (iv) other factors that affect the determination of adjusted income.

10. How to comply with and reduce administrative burden of third-party verification requirements of family annual income. PHAs can comply with and reduce administrative burden of third-party verification requirements for employment, wage, unemployment compensation and Social Security benefits, and any other information that is verifiable using EIV by:

a. Reviewing the EIV Income and IVT Reports to confirm/validate tenant-reported income;
b. Printing and maintaining the EIV Income and IVT Reports in the tenant file;
c. Obtaining current acceptable tenant-provided documentation to supplement the EIV information; and
d. Using current tenant-provided documentation and/or third-party verification to calculate annual income.

Note: Social Security benefit information in EIV is updated every three months. If the tenant agrees with the EIV-reported benefit information, PHAs do not need to obtain or request a benefit verification letter from the tenant. See PIH notice 2012-10 for guidance on verifying Social Security benefit income through the EIV system.

The PHA also may reduce the administrative burden of obtaining third party verification by relying on acceptable documents that are generated by a third-party but provided by the tenant. Many documents in the possession of the tenant are derived from third party sources (e.g., employers, federal, state and/or local agencies, banks, etc.).

11. When the PHA is required to request written third-party verification. The PHA must request written third-party verification under the following circumstances:

a. When the tenant disputes the EIV information and is unable to provide acceptable documentation to support his/her dispute (24 CFR 5.236(b)); and

b. When the PHA requires additional information that is not available in EIV and/or the tenant is unable to provide the PHA with current acceptable tenant-provided documentation. Examples of additional information include, but are not limited to:

i. Effective dates of income (i.e., employment, unemployment compensation, or social security benefits)
ii. For new employment: pay rate, number of hours worked per week, pay frequency, etc.
iii. Confirmation of changes in circumstances (i.e., reduced hours, reduced rate of pay, temporary leave of absence, etc.)

Note: 24 CFR 5.236(a), prohibits PHAs from taking adverse action based solely on EIV information.

12. Type of file documentation required to demonstrate PHA compliance with mandated use of EIV as a third-party source to verify tenant employment and income information (24 CFR 5.233(a)(2)(i)).

a. For each new admission (form HUD-50058 action type 1), the PHA is required to:

   i. Review the EIV Income and IVT Reports to confirm/validate family-reported income within 120 days of the Inventory Management System Public and Indian Housing Information Center (IMS/PIC) submission date; and
   ii. Print and maintain copies of the EIV Income and IVT Reports in the tenant file; and
   iii. Resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

b. For each historical adjustment (form HUD-50058 action type 14), the PHA is required to do the following:

   i. Review the EIV Income and IVT Reports to confirm/validate family-reported income within 120 days of the IMS/PIC submission date; and
   ii. Print and maintain copies of the EIV Income and IVT Reports in the tenant file; and
   iii. Resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

c. For each interim reexamination (form HUD-50058 action type 3) of family income and composition, the PHA is required to have the following documentation in the tenant file:
   i. When there is no household identified income, discrepancy reported on the form HUD-50058, the EIV Income Report or IVT Report, PHAs have the discretion to print the EIV Income and IVT Reports to document the tenant file; and
   ii. In cases when there **is** an identified income discrepancy among the form HUD-50058, the EIV Income Report or IVT Report, PHAs must follow up with the family and resolve the differences between the reported information as noted in Section 8.

d. **For each reexamination of family income and composition, the PHA is required to have the following documents in the tenant file:**

No Dispute of EIV Information: There are no disputes among the EIV Income and IVT Reports. The tenant file includes current acceptable tenant provided documentation and if necessary (as determined by the PHA), traditional third-party verification and a current copy of the form HUD-50058 or to be maintained in the tenant file.

Disputed EIV Information: There is a discrepancy in at least one of the EIV Income or IVT Reports or the form HUD-50058 is not current or is inconsistent and/or traditional third-party verification form(s) for the disputed information is not clear. Copies of the EIV Income and IVT reports, income verification and a corrected form HUD-50058 will

be maintained in the tenant file. See example 2 below.

In cases when the Tenant-reported income is not verifiable through the EIV system: Current tenant provided documents and if necessary, (as determined by the PHA), traditional third-party verification form (s) and copies of the EIV Income and IVT reports and a corrected form HUD-50058 will be maintained in the tenant file. See example 3 below.

Example 1: No Disputed EIV Information & Tenant Provided Documents

The PHA is conducting a reexam with tenant, Mary Jones. Ms. Jones reports that she is employed at the ABC Box Company. You pull up the EIV Income and IVT Reports for the Jones family, which shows quarterly wages from the ABC Box Company for the full year of 2015, and the first two quarters of 2016. Last year's (2016) reexam reflects wages from the same employer. There is no other income information on the EIV Income and IVT Reports.

The PHA may streamline the income verification process by requesting Ms. Jones provide current pay stubs dated within the last 60 days of the interview or PHA request date. The PHA must obtain a minimum of two current and consecutive pay stubs from Ms. Jones. Since there is no disparity between tenant-reported Income and the IVT Reports. The PHA may obtain original and current tenant-provided pay stubs to calculate annual income as noted below.

Example 2: Disputed EIV Information & No Tenant-Provided Documents

The PHA is conducting a reexam with tenant, Bob Miller. Mr. Miller reports that his only source of income is monetary support from his sister, Betty Miller. The PHA obtains the EIV Income and IVT Reports for the Miller family, which show an apparent income discrepancy and quarterly wages from the Home Depot for the full year of 2015, and the first two quarters of 2016. There is no other income information on the EIV Income and IVT Reports. Last year's (2016) reexam on form HUD-50058 reflects no wage information and the only source of income is other non-wage income (monetary support from a family member).

The PHA informs Mr. Miller that the EIV system shows wages from the Home Depot and requests he provide current pay stubs. Mr. Miller states that he does not work there and has no pay stubs.

Because Mr. Miller disputes the EIV-reported income and has not provided documents to support his dispute, the PHA **must** request written third-party verification from Home Depot to verify Mr. Miller's employment status. The PHA mails a third-party verification request form to the address listed for Home Depot.

A few days later the PHA receives the third-party verification request form back from Home Depot, which indicates that Mr. Miller has been employed there since January 5, 2013, and a payroll summary report, showing Mr. Miller's bi-weekly gross and net pay since January

2013. Since the disputed EIV information has been confirmed to be correct by the independent third-party source (Home Depot), the PHA will use the income information from the payroll summary report to calculate annual income. The PHA also would calculate the retroactive rent using the information provided by Home Depot since Mr. Miller failed to disclose his employment at the 2013 through 2016 annual reexaminations as well as the current year. The PHA would inform Mr. Miller of this retroactive rent and take action pursuant to PHA-established policies.

Example 3: Tenant Unreported Income, Income not Verifiable through EIV & Tenant-Provided Documents

The PHA is conducting a reexam with tenant, Sharon Duvet. Ms. Duvet reports that her only source of income is child support and provides you with verification that includes the last four (4) child support payments. The PHA obtains the EIV Income and IVT Reports for the Duvet family, which shows a discrepancy and a hire date at the District Police Department effective January 9, 2017; quarterly wages from the District Police Department for the full years of 2014, 2015 and 2016 and the first two quarters of 2017. There is no other income information on the EIV Income or IVT Reports. Last year's (2016) reexam on form HUD-50058 reflects income only from child support. The PHA informs Ms. Duvet that the EIV system is showing wages from the District Police Department and requests that she provide current verification of her pay.

Ms. Duvet admits that she has been working at the District Police Department and indicates that she can provide you with current pay stubs. You inform Ms. Duvet that you now will calculate her retroactive rent for the previous years in which she did not disclose her employment. You go over the EIV-reported wages with Ms. Duvet and she indicates that she does not dispute the information.

Since Ms. Duvet does not dispute the EIV-reported information, the PHA may use the tenant-provided documents to calculate income and rent for the 2017 reexam and use the EIV-reported earnings for years 2014 and subsequent years through 2017 to calculate the retroactive rent Ms. Duvet will owe. The PHA should require Ms. Duvet to provide her last pay stub from 2016, or her 2016 W-2, to calculate the retroactive rent for 2017. The PHA will use the tenant-provided child support pay stubs (child support income is not available in EIV) to calculate annual income from this source.

13. What if the tenant does not provide the PHA with requested information? If the tenant does not provide the requested information, the PHA may mail or fax a third-party verification request form to the third-party source. The PHA is *required* to request third-party verification when the tenant disputes EIV information and the tenant is unable to provide acceptable documentation to support disputed information. In addition, the PHA should remind the tenant that the tenant is required to supply any information requested by the PHA for use in a regularly scheduled or interim reexamination of family income and composition.

The PHA may ***determine*** that the tenant is not in compliance with program requirements and terminate tenancy or assistance, or both, if the tenant fails to provide the requested information in a timely manner, as prescribed by the PHA.

14. How to use EIV to reduce administrative and subsidy payment errors? EIV can help identify other potential issues which may impact a family's level of assistance. EIV contains stand-alone reports, which a PHA may generate at any time (i.e. Deceased Tenants Report, New Hires Report, Multiple Subsidy Report, Identity Verification Report, IVT Report, Debts Owed to PHAs & Termination Report, and Immigration Report). However, it should be noted that the information from these stand-alone reports are contained in the Income and IVT Reports for each household. PHAs are required to address any and all potential issues at the time of the regular or interim reexam, as conveyed in the Income and IVT Reports.

PHAs may use the stand-alone reports to monitor staff's progress in reducing the following administrative and subsidy payment errors by using the listed reports:

a. Incorrect/invalid SSNs/name/date of birth – Identity Verification Report
b. Follow-up with families who need to disclose an SSN – Immigration Report
c. Duplicate rental assistance – Multiple Subsidy Report
d. Unreported increase in income – IVT Report
e. Improper payments on behalf of deceased tenants – Deceased Tenants Report
f. Unreported new employment (PHAs with interim increase policy) – New Hires Report
g. Adverse Termination/Outstanding Debt to PHA – Debts Owed to PHAs & Termination Search

To ensure PHAs are aware of potential subsidy payment errors, PHAs are *required* to monitor the following EIV reports monthly:

a. Deceased Tenants Report
b. Identity Verification Report
c. Immigration Report
d. IVT Report based on PHA reexamination schedule (Report will include information from the New Hires Report (NDNH))
e. Multiple Subsidy Report

15. How to use the EIV Income and IVT Reports as a third-party source to verify tenant employment and income information? The EIV Income and IVT Reports provide a variety of information about Heads of Household, household member(s) and employment data. The report contains the following information for each household member:

a. Personal identifiers: name, date of birth, and SSN
b. Identity verification status (pending, verified, deceased, or failed)
c. Employment information
    1. New Hire Information (W-4)
        i. Date Hired
        ii. Employer Name

2. Employer name, address, and employer identification number of current and past employers
3. Quarterly earnings

d. Quarterly unemployment compensation. Social Security benefit information
   1. Social Security (SS) benefits
      i. Payment status code
      ii. Date of current entitlement
      iii. Current net monthly benefit amount (if payable)
      iv. Gross monthly benefit history (last 8 changes in benefit amount)
      v. Lump sum payment amount and date
      vi. Payee name and address
   2. Dual Entitlement (Social Security benefits under another person's SSN)
      i. Claim Number (the other person's SSN)
      ii. Payment status code
      iii. Date of current entitlement
      iv. Current net monthly benefit amount (if payable)
      v. Gross monthly benefit history (last 8 changes in benefit amount)
      vi. Payee name and address
   3. Supplemental Security Income (SSI)
      i. Payment status code
      ii. Alien indicator
      iii. Current net monthly benefit amount
      iv. Current monthly state supplement benefit amount (if available)
      v. Gross monthly benefit history (last 8 changes in benefit amount)
      vi. Payee name and address
   4. Medicare data
      i. Payee name and address
      ii. Monthly hospital insurance premium amount, buy-in status, and buy-in start and end Dates
      iii. Monthly supplemental medical insurance premium amount, buy-in status, and buy-in start and end dates

e. Disability status and onset date
f. Identity verification status
g. Indicator of possible multiple rental subsidy
h. Indicator of debt and/or termination information from another PHA (effective September 2010)

All EIV Income and IVT Reports contain the date the report was generated and by whom; and the date EIV received each type of information.

To minimize tenant underreporting of income, PHAs are required to obtain an EIV Income and IVT Report for each family any time the PHA conducts a reexamination of family income and composition.

In accordance with 24 CFR 5.236(b)(3), PHAs are required to compare the information on the EIV reports with the family-reported information on form HUD-50058. **If the EIV Income or IVT Report reveal an income source that was not reported by the tenant or a substantial difference in the reported income information, the PHA is required to take the following actions**:

1. Discuss the income discrepancy with the tenant; and
2. Request the tenant to provide any documentation to confirm or dispute the unreported or underreported income and/ or income sources; and
3. In the event the tenant is unable to provide acceptable documentation to resolve the income discrepancy, the PHA is required to request from the third-party source, any information necessary to resolve the income discrepancy; and
4. If applicable, determine the tenant's underpayment of rent due to unreported or underreported income, retroactively*; and
5. Take any other appropriate action as directed by HUD or the PHA's administrative policies.

*The PHA is required to determine the retroactive rent as far back as the existence of complete file documentation (form HUD-50058 and supporting documentation) to support such retroactive rent determinations.

Note: A substantial difference is defined as an amount equal to or greater than $2,400 annually.

The tenant must be provided an opportunity to contest the PHA's determination of tenant rent underpayment. HUD regulations require PHAs to promptly notify tenants in writing of any adverse findings made based on information verified through the aforementioned income discrepancy resolution process. The tenant may contest the findings in accordance with the PHA's established grievance procedures, as required by HUD. The PHA may not terminate, deny, suspend, or reduce the family's assistance until the expiration of any notice or grievance period.

When there is insubstantial or no disparity between tenant-reported and EIV-reported income information, the PHA is required to obtain from the tenant any necessary documentation to complete the income determination process. As noted previously, the PHA may reject any tenant-provided documentation, if the PHA deems the documentation unacceptable. The PHA may reject documentation provided by the tenant for only the following HUD-approved reasons:

1. The document is not an original; or
2. The original document has been altered, mutilated, or is not legible; or
3. The document appears to be a forged document (i.e. does not appear to be authentic).

The PHA should explain to the tenant, the reason(s) the submitted documents are not acceptable and request the tenant provide additional documentation. If at any time, the tenant is unable to provide acceptable documentation that the PHA deems necessary to complete the income determination process, the PHA is required to submit a traditional third-party verification form to the third-party source for completion and submission to the PHA.

If the third-party source does not respond to the PHA's request for information, the PHA is required to document the tenant file of its attempt to obtain third-party verification and that no response to the third-party verification request was received.

The PHA should then pursue lower level verifications in accordance with the verification hierarchy listed in section 8 of this notice.

16. Tenant Repayment Agreement. Tenants are required to reimburse the PHA if they were charged less rent than required by HUD's rent formula due to the tenant's underreporting or failure to report income. The tenant is required to reimburse the PHA for the difference between the tenant rent that should have been paid and the tenant rent that was charged. This rent underpayment is commonly referred to as retroactive rent. If the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new repayment agreement, the PHA **must** terminate the family's tenancy or assistance, or both. HUD does **not** authorize any PHA-sponsored amnesty or debt forgiveness programs.

All repayment agreements must be in writing, dated, signed by both the tenant and the PHA, include the total retroactive rent amount owed, amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. At a minimum, repayment agreements must contain the following provisions:

a. Reference to the paragraphs in the Public Housing lease or Section 8 information packet whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance, or both.
b. The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the PHA.
c. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
d. Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.

PHAs are required to determine retroactive rent amount as far back as the PHA has documentation of family unreported income. For example, if the PHA determines that the family has not reported income for a period of five years and only has documentation for the last three years, the PHA is only able to determine retroactive rent for the three years for which documentation is available.

The monthly retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40 percent of the family's monthly adjusted income. However, PHAs have the discretion to establish thresholds and policies for repayment agreements in addition to HUD required procedures.

Example:

- Family's monthly adjusted income is $1,230.
- Family's monthly rent payment is $369 (30% of the family's monthly adjusted income).
- 40% of the family's monthly adjusted income is $492.
- The monthly payment for the repayment agreement should not exceed $123 per month ($369 monthly rent + $123 repayment = $492, 40% of the family's monthly adjusted income.)

Repayment Time Period. The period in which the retroactive rent balance will be repaid is based on the monthly payments and original retroactive balance.

Example:

- The tenant agrees to repay $1,000, by making a monthly payment of $25 for 40 months.

Repayment Options. Tenants have the option to repay the retroactive rent balance as follows:

1. In a lump sum payment; or
2. Monthly installment; or
3. A combination of 1 and 2, above.

Example:

- a tenant may owe $1,000, make a lump sum payment of $300 and enter into a repayment agreement for the remaining balance of $700.

17. How long should the PHA maintain EIV printouts in a tenant file? The PHA's record retention policy will determine the length of time the PHA should maintain EIV printouts in a tenant file. PHAs are authorized to maintain the EIV Income and other reports (see Section 8) in the tenant file for the duration of tenancy and no longer than three years from the end of participation (EOP) date. In accordance with revised regulation, 24 CFR 908.101, PHAs are required to maintain at a minimum, the last three years of forms HUD-50058 and supporting documentation for all regular and interim reexaminations of family income. All records are to be maintained for a period of at least three years or longer as required from the effective date of the action.

18. Disclosure of an Individual's EIV Information. The Federal Privacy Act (5 USC §552a(b), as amended) prohibits the disclosure of an individual's information to another person without the written consent of such individual. As such, the EIV data of an adult household member may not be shared (or a copy provided or displayed) with another adult household member, unless the individual has provided written consent to disclose such information.

However, the PHA is not prohibited from discussing with the head of household (HOH) and showing the HOH how the household's income and rent were determined based on the total family income reported and verified.

EIV information and any other information obtained by the PHA for the purpose of determining eligibility and level of assistance for a PIH rental assistance program may not be disclosed to third parties for any reason (even for similar verifications under other programs, such as eligibility for low income housing tax credit units, other federal or state assistance programs), unless the tenant has authorized such disclosure in writing.

19. What to do if the EIV Information is incorrect? Sometimes the source or originator of EIV information may make an error when submitting or reporting information about tenants. HUD cannot correct data in the EIV system. Only the originator of the data can correct the information. When the originator corrects the data, HUD will obtain the updated information with its next computer matching process. Below are the procedures tenants and PHAs should follow regarding incorrect EIV information.

Employment and wage information reported in EIV originates from the employer. The employer reports this information to the local State Workforce Agency (SWA), who in turn, reports the information to HHS' National Directory of New Hires (NDNH) database.

If the tenant disputes this information, the tenant should contact the employer directly, in writing to dispute the employment and/or wage information, and request that the employer correct erroneous information.

The tenant should provide the PHA with this written correspondence so that it may be maintained in the tenant file. If employer resolution is not possible, the tenant should contact the local SWA for assistance.

Unemployment benefit information reported in EIV originates from the local SWA. If the tenant disputes this information, the tenant should contact the SWA directly, in writing to dispute the unemployment benefit information, and request that the SWA correct erroneous information. The tenant should provide the PHA with this written correspondence so that it may be maintained in the tenant file.

SS and SSI benefit information reported in EIV originates from the SSA. If the tenant disputes this information, the tenant should contact the SSA at 800-772-1213 or visit the local SSA office. SSA office information is available in the government pages of the local telephone directory or online at **http://www.socialsecurity.gov**.

Note: The tenant also may provide the PHA with third-party documents which are in the tenant's possession to support their dispute of EIV information. The PHA, with the tenant's consent, is required to submit a third-party verification form to third-party sources for completion and submission to the PHA, when the tenant disputes EIV information and is unable to provide documentation to validate the disputed information. The tenant's failure to sign the consent form is grounds for termination of tenancy and/or assistance in accordance with 24 CFR 5.232.

Debts owed to PHAs and termination information reported in EIV originates from the PHA. If a current or former tenant disputes this information, that tenant should contact the PHA (who reported the information) directly in writing to dispute this information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV. Former tenants may dispute debt and termination information for a period of up to 3 years from the end of participation date in the PIH program.

Identity Theft. Seemingly incorrect information in EIV may be a sign of identity theft. Sometimes someone else may use an individual's SSN, either intentionally or by accident. SSA does not require an individual to report a lost or stolen SSN card and reporting a lost or stolen SSN card to SSA will not prevent the misuse of an individual's SSN. However, someone using an individual's SSN can get other personal information about that individual and apply for credit in that individual's name. Accordingly, if the tenant suspects someone is using his/her SSN, the tenant should check Social Security records to ensure the records are correct (call SSA at 800-772-1213); file an identity theft complaint with the local police department and/or Federal Trade Commission (call FTC at 877-438-4338, or visit the FTC website at: **https://www.identitytheft.gov** and monitor the tenant's credit reports with the three national credit reporting agencies (Equifax, TransUnion, and Experian). The tenant also should provide the PHA written documentation of the filed identity theft complaint. (Refer to paragraph above on **Employment and wage information** regarding disputed EIV information related to identity theft).

Tenants may request their credit report and place a fraud alert on their credit report with the three national credit reporting agencies at: **www.annualcreditreport.com**, by phone at 877-322-8228, or by contacting the credit reporting agency directly.

The contact information for each national credit reporting agency is:

Equifax Credit Information Services, Inc.
P.O. Box 740241
Atlanta, GA 30374
Website: **www.equifax.com**
Telephone: 866-349-5191

Experian
P.O. Box 2104
Allen, TX 75013
Website: **www.experian.com**
Telephone: 888-397-3742

TransUnion
P.O. Box 6790
Fullerton, CA 92834
Website: **www.transunion.com**
Telephone: 800-888-4213

20. Security of EIV Data. The data in EIV contains personal information on individual tenants which is protected under the Federal Privacy Act. The information in EIV may only be used for limited official purposes, as noted below.

a. **Official Purposes Include:**

1. PHAs, in connection with the administration of PIH programs, for verifying employment and income at the time of interim and annual reexaminations.

2. HUD staff for monitoring and oversight of PHA compliance with HUD program requirements.

3. Independent Auditors hired by the PHA or HUD to perform a financial audit for use in determining the PHA's compliance with HUD program requirements, including verifying income and determining the accuracy of the rent and subsidy calculations.

Restrictions on disclosure requirements for Independent Auditors:

- May only access EIV income information within family files and only within the offices of the PHA or PHA-hired management agent;
- May not transmit or transport EIV income information in any form;
- May not enter EIV income information on any portable media;
- Must sign non-disclosure oaths that the EIV income information will be used only for the audit; and
- May not duplicate EIV income information or re-disclose EIV income information to any user not authorized by 5 U.S.C. 552a(b) of the Privacy Act to have access to the EIV income data.

b. **Official Purposes Do NOT Include:**

Sharing the information with governmental or private entities not involved in their examination process specifically used for PIH rental assistance programs.

Disclosing the EIV information to other private or public entities for purposes other than determining eligibility and level of assistance for PIH rental assistance programs is prohibited since these entities are not a party to the computer matching agreements with the HHS and SSA. The fact that these entities may find EIV beneficial for similar eligibility and determination purposes for other low-income housing programs or public benefits, does not permit these entities to use or view information in the EIV system that is covered by the computer matching agreements.

The computer matching agreements are governed by the Privacy Act and the Social Security Act. Specifically, 5 U.S.C. 552a(b) limits disclosure of the data matched between HUD and HHS' National Directory of New Hires (NDNH) database to PHAs, Independent Auditors, the Inspector General (IG) and Attorney General, private owners, management agents, and contract administrators of Multifamily Housing programs.

c. **Penalties for Willful Disclosure or Inspection of EIV Data.**

1. **Unauthorized Disclosure** – felony conviction and fine up to $5,000 or imprisonment up to five (5) years, as well as civil damages.
2. **Unauthorized Inspection** – misdemeanor penalty of up to $1,000 and/or one (1) year imprisonment, as well as civil damages.

21. Penalties for Noncompliance with Mandated EIV System Use. PHAs may be subject to sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculation or both. It should be noted that HUD may impose a sanction on any PHA who does not have access to the EIV system or any PHA that has access to the system but has not used the system within the last six months. To avoid sanctions or disallowed costs, PHAs should follow all formal and informal guidance provided to PHAs via webcast trainings, PIH Rental Housing Integrity Improvement Project (RHIIP) periodic electronic mailings, and any other HUD Headquarters-generated guidance.

HUD will monitor each PHA's effective and mandated use of the EIV system with analysis of data in the following EIV reports:

- Deceased Tenants Report
- IVT Report
- Multiple Subsidy Report
- Identity Verification Report
- Immigration Report, and
- Failed Effective Date Check Report (Overdue Reexams) in the Identity Verification Report

Note: PHAs may look at the Reexamination Report in the form HUD-50058 in the IMS/PIC sub module for complete details on reexamination status.

This monitoring also will evaluate access to and frequency of use of the EIV and DHS Systematic Alien Verification of Entitlements (SAVE) systems. If at any time these reports identify apparent inefficient or ineffective use of the EIV System, HUD will provide information to the PHAs on the issues identified and request the PHA(s) to provide evidence of resolution. The notification to the PHAs and the data submission to HUD will be in a format determined by HUD.

22. EIV System Training Information. As a condition of initial and continued access to the EIV System, HUD and PHA staff are required to complete Annual Security Awareness training and EIV system training (initial system training) and update (interim system changes) training when offered by HUD Headquarters (HHQ). This training requirement also applies to those individuals who will not access EIV but will view or handle printed and/or electronic EIV data. Individuals who will view and/or handle printed EIV information are required to complete only annual Security Awareness training (EIV system training is optional for these individuals). EIV training provided by third parties (other than HUD Headquarters) does not fulfill the mandatory EIV training requirement.

EIV system users who need to complete EIV training may view EIV training webcasts at: **https://www.hud.gov/program_offices/public_indian_housing/programs/ph/rhiip/piheivwebcasts**

> **Note:** Employees must complete the training **prior** to accessing the EIV system and/or printed EIV reports.

23. Updating of PHA Policies and Procedures. PHAs are required to immediately implement all new and modified regulatory and/or PIH notice requirements of the Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System-Amendments. The Department recognizes that many PHAs have already begun to modify existing policies and procedures to reflect use of EIV during all mandatory and interim reexams. PHAs should immediately update their policies and procedures to reflect new regulatory provisions.

24. Rental Housing Integrity Improvement Project (RHIIP)/EIV Resources. For your convenience, PIH EIV information is available on the web at the below listed URLs. Many of your questions can be answered by viewing information that is posted on the HUD web pages. Bookmark these pages:

Training and Technical Assistance (including webcast training materials)

https://www.hud.gov/program_offices/public_indian_housing/programs/ph/rhiip/piheivwebcasts

EIV System, Access Authorization Form, and User Manuals:

https://www.hud.gov/program_offices/public_indian_housing/programs/ph/rhiip/uivsystem

Webcasts Archives:

https://www.hud.gov/press/multimedia

Follow the videos/archived webcasts link.

Report Fraud, Waste & Abuse to HUD OIG:

https://www.hudoig.gov/report-fraud

PIH notices:

https://www.hud.gov/program_offices/public_indian_housing/publications/notices

25. Paperwork Reduction: The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB under the Paperwork Reduction Act of 1995 (44 USC §3501 et seq.) and assigned OMB control number(s) 2577-0083 and 2577-0266. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number

26. For inquiries about this notice contact: The designated EIV Coordinator in the local HUD field office or Rochelle Katz of HUD Headquarters' Office of Public and Indian Housing at 202-475-4967, or via email at: **rochelle.katz@hud.gov**

/s/

Dominique Blom
General Deputy Assistant Secretary
for Public and Indian Housing

11/27/18 Notice PIH 2018-24; Verification of Social Security Numbers (SSNs), Social Security (SS) and Supplemental Security Income (SSI) Benefits; and Effective Use of the EIV System's Identity Verification Report

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:
Public Housing and Section 8 Program Administrators, Public Housing Hub Office Directors; Public Housing Field Office Directors**;** Program Center Coordinators; Resident Management Corporations; Resident Councils; Participants of Public Housing, Housing Choice Voucher, Project-Based Certificate, and Project-Based Voucher Programs; Section 8 Property Owners and Landlords

Notice: PIH 2018-24
Issued: November 27, 2018

Expires: Effective until amended, superseded, or rescinded

Cross References: 24 CFR §5.216, 24 CFR §5.218, and 24 CFR §5.233

SUBJECT: Verification of Social Security Numbers (SSNs), Social Security (SS) and Supplemental Security Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System's Identity Verification Report

1. **Purpose.** This notice is the administrative guidance that explains the procedures public housing agencies (PHAs) are required to use for verifying social security numbers, social security benefits of applicants, and participants and household members at the time of application for rental housing assistance programs and during mandatory reexamination of household income. This notice also includes the procedures for effective use of the EIV system to reduce subsidy payment and administrative errors. This notice supersedes Notice PIH 2012-10.

   The notice includes the following updates:

   a. Updated website links and references.

   b. Removal of the provision in Paragraph # 22 requiring a PHA to notify HUD Headquarters when the PHA determines the tenant name or surname reported on the HUD 50058 is correct. In these instances, PHAs may notify the Social Security Administration (SSA).

   c. Revisions to the "Authorized Workarounds" in Paragraph # 22 for overdue examinations not completed due to pending litigation. Any information PHAs send to the field office must now be sent only by encrypted emails.

   d. Clarification of the penalties for noncompliance with EIV's Identity Verification Report in Paragraph # 24 and elimination of the right to appeal the imposition of penalties.

e. Elimination of the attachments.

2. Applicability. This notice applies to the following HUD-PIH rental assistance programs: Public Housing, Section 8 Moderate Rehabilitation, Project-Based Certificate, Project-Based Voucher, and Housing Choice Voucher Programs. This notice also applies to all PHAs, including Moving-to-Work (MTW) PHAs who administer these programs.

3. Background. The Housing and Community Development Act of 1987 (Public Law 100242; 101 Stat. 1864; 42 USC §3543) grants the Secretary the authority to require applicants and participants (including their household members) to disclose his/her social security number (SSN) as a condition of initial or continuing eligibility for participation in any HUD rental assistance program.

HUD uses the SSN (along with the name and date of birth) of an individual to validate that person's identity, obtain employment and income information via computer matching programs, and ensure duplicate assistance is not being paid. These uses allow HUD, program administrators, and auditors to determine compliance with program requirements, as well as determine the eligibility and level of assistance a family is eligible to receive and reduce improper payments, and to prevent fraud waste and abuse in HUD rental assistance programs.

Under HUD regulations at 24 CFR §§ 5.216 and §5.233, PHAs are required to use the EIV system to reduce administrative and subsidy payment errors. In accordance with this, PHAs:

a. Use EIV's Identity Verification report for effective decision making, corrective action implementation, and reporting activities;

b. Implement policies and procedures to minimize erroneous subsidy payments on behalf of families who have not complied with the required SSN disclosure and documentation requirements;

c. Use EIV to validate and/or verify tenant-reported social security benefits; and

d. Provide accurate and reliable information to HUD in the Inventory Management System Public and Indian Housing Information Center (IMS/PIC).

PHAs verify social security benefits of applicants, participants, and household members by contacting the local office of the SSA by phone, fax, or in writing; reviewing an original social security benefit check; or accepting tenant-provided benefit verification letters. SSA electronically provides HUD with available benefit information on all current participants and household members who have disclosed a valid SSN, name and date of birth which matches SSA records. HUD makes this information available to administrators of Public Housing and Section 8 programs through the EIV system. Electronic benefit verification is the most efficient verification method available and allows PHAs to process family annual and interim reexaminations expeditiously. SSA continues to receive requests for income verification from PHAs despite the electronic exchange of SS and SSI benefit

information between SSA and HUD. However, PHAs are not to refer applicants for or participants of HUD rental assistance programs to local SSA offices to obtain verification of the amount of their SS/SSI benefits. PHAs are required to use the EIV system as a third-party source to verify tenant income information during all mandatory annual and interim reexaminations of family income and composition, in accordance with 24 CFR §5.236 and HUD administrative guidance.

4. **Effective Date.** This notice is effective upon issuance and remains effective until amended, superseded, or rescinded.

5. **SSN Disclosure.** In accordance with 24 CFR §5.216, applicants and participants (including each member of the household and including, live-in aides, foster children, and foster adults) are required to disclose his/her SSA-assigned SSN, with the exception of the following individuals:

    a. Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States) **and** have not been assigned an SSN. These individuals in most instances would not be eligible for a SSN.
        i. A family that consists of a single household member (including a pregnant individual) who does not have eligible U.S. citizenship or eligible immigration status is **not eligible** for housing assistance and cannot be housed.
        ii. A family that consists of two or more household members **and at least one** household member that has eligible U.S. citizenship or eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR §5.520. The PHA may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.

    Note: Financial assistance may only be provided to individuals with eligible immigration status in accordance with 42 USC §1436a, which is generally evidenced by the individual providing his/her Green Card (Form I-551 – U.S. Permanent Residence Card) or other documentation approved by the Department of Homeland Security for noncitizens with refugee or asylee status.

    b. Existing program participants, who as of January 31, 2010, were 62 years of age or older (born on or before January 31, 1948). This exemption continues even if the individual moves to a new public housing assisted unit.

    Disclosure of SSNs is considered information subject to the Federal Privacy Act (5 USC §552a, as amended). In accordance with 24 CFR §5.212, the collection, maintenance, use, and dissemination of SSNs, any information derived from SSNs and income information must be conducted, to the extent applicable, in compliance with that Act and all other provisions of Federal, State, and local laws.

    An individual who previously declared to have eligible immigration or eligible citizenship status may **not** change his/her declaration to no longer contend to have eligible immigration

status to avoid compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance of these requirements.

Note: There are no provisions under HUD regulations which prohibit a mixed family from executing a lease or other legally binding contract. A mixed family includes individuals that have both eligible and ineligible aliens so long as at least one household member is eligible. However, some State laws prohibit single ineligible individuals from executing a contract (i.e., lease or other legally binding documents). If this is the case in your State, the family must **not** be admitted into the program.

6. **SSN Documentation.** The PHA must request the applicant and participant (including each member of the household), who are not exempt under Paragraph 5 of this notice, to provide documentation of each disclosed SSN. Acceptable evidence of the SSN consists of:

   a. An original SSN card issued by SSA;

   b. An original SSA-issued document, which contains the name and SSN of the individual; or

   c. An original document issued by a Federal, State, or local government agency, which contains the name and SSN of the individual.

   It should be noted that most (if not all) individuals who are lawfully present in the U.S. have been assigned an SSN. Many existing laws require the disclosure of the SSN for various purposes. All applicants and participants, including each member of the household (with the exception of those individuals noted in Paragraph 5 of this notice) are required to disclose his/her SSA-assigned SSN.

   The SSA issues three types of social security cards depending on an individual's citizen or noncitizen status and whether or not a noncitizen is authorized by the Department of Homeland Security (DHS) to work in the United States. They include:

   a. The first type of card shows the individual's name and SSN only. This is the card most people have and reflects the fact that the holder can work in the U.S. without restriction. SSA issues this card to:
      i. U.S. citizens; or
      ii. Noncitizens lawfully admitted to the United States for permanent residence and noncitizens with DHS permission to work permanently in the United States (i.e., refugees and asylees).

   b. The second type of card bears, in addition to the individual's name and SSN, the legend: "**NOT VALID FOR EMPLOYMENT.**" SSA issues this card to lawful noncitizens who do not have DHS permission to work and are required by law to provide an SSN to obtain general assistance benefits that they already have qualified for.

c. The third type of card bears, in addition to the individual's name and SSN, the legend **"VALID FOR WORK ONLY WITH DHS AUTHORIZATION."** SSA issues this card to people with DHS permission to work temporarily in the United States. SSA verifies all noncitizens' documents with DHS before an SSN card is issued to a noncitizen.

7. Rejection of Documentation. The PHA may reject documentation of the SSN provided by the applicant or participant for only the following reasons:

a. The document is not an original document; or

b. The original document has been altered, mutilated, or is not legible; or

c. The document appears to be a forged document (i.e., does not appear to be authentic).

The PHA should explain to the applicant or participant, the reason(s) the document is not acceptable and request the individual to obtain acceptable documentation of the SSN and submit it to the PHA within a specified time frame.

8. Verification of the SSN. The PHA shall verify each disclosed SSN by:

a. Obtaining the documentation listed under Paragraph 6 of this notice from applicants and participants (including each member of the household);

b. Making a copy of the original documentation submitted, returning it to the individual, and retaining the copy in the file folder; and

c. Recording the SSN on line 3n of the form HUD-50058 and transmitting the form HUD-50058 to HUD within a timely manner. PHAs are required to transmit the form HUD-50058 no later than 30 calendar days of receiving the SSN documentation, to enable HUD to initiate its computer matching efforts for current program participants.

Note: HUD does not initiate computer matching efforts for applicants.

HUD, via its computer matching program with the SSA, will validate the SSN (along with the individual's name and date of birth) against the SSA's database. EIV will report the status of the identity verification process as **Verified, Failed, Pending, Excluded,** or **Deceased** on the household ***Summary Report***. Below is a summary of the action the PHA is required to take for each identity verification status.

a. Verified. If the information matches the SSA database, the individual's identity verification status will be **Verified** (See Exhibit 1 below). No action is required by the PHA.

b. Failed. If the information does **not** match the SSA database, the identity verification status will be **Failed** (see Exhibit 2 below). See Paragraph 22 of this notice for guidance on how to correct personal identifiers of individuals whose identity verification status is failed.

c. Pending. If an individual's identity verification status is **Pending** (see Exhibit 3 below), this means that HUD has not yet sent the tenant's personal identifiers to SSA for validation. No action is required by the PHA.

d. Excluded. Effective April 30, 2012, if an individual's identity verification status is **Excluded** (see Exhibit 4 below), this means that HUD will not send the tenant personal identifiers to SSA for validation because a valid SSN is not reported on line 3n of the form HUD-50058 or the individual has failed EIV pre-screening as described in Paragraph 22 of this notice.

e. Deceased. If an individual's identity verification status is **Deceased** (see Exhibit 5 below), this means SSA's records indicate the person is deceased. The PHA is required to confirm the death with the family's head of household or listed emergency contact person. If the individual is deceased and the only household member or the only surviving household members are a live-in aide and the live-in aide's family (single member household), the PHA must complete an end of participation (EOP) action on form HUD-50058 and discontinue assistance and/or tenancy. If the individual is not deceased, refer to the instructions in PIH Notice 2012-04, dated January 1, 2012 (or any successor notice).

   If there are authorized household members remaining in the program, update the family composition accordingly, complete an interim reexamination action on form HUD-50058, and take any other action in accordance with HUD administrative guidance (see PIH Notice 2012-04) and PHA-established policies.

See the *HUD-SSA Computer Matching Schedule* in Paragraph 17 of this notice to determine when your State's data will be matched. The PHA is required to retain the EIV ***Summary Report*** or ***Income Report*** in each family file as confirmation of compliance with the SSN disclosure, documentation and verification requirements. Electronic retention of these reports is permissible.

Once the individual's identity verification status is classified as **Verified**, the PHA may, at its discretion, remove and destroy the copy of the documents referenced in Paragraphs 6 and 8 of this notice. Paper documentation must be destroyed by either shredding or burning. Electronic documentation must be destroyed by erasing or permanently deleting the file. Additional guidance related to destruction of records is available in HUD Handbook 2400.25, Rev 4.1: *HUD Information Technology Security Policy*, dated March 2016. The handbook is available online at: http://www.hud.gov/sites/dfiles/OCHCO/documents/240025CIOH.pdf. Retention of the EIV report which shows an identity verification status of **Verified** in the tenant file is adequate documentation of a valid tenant SSN. This will minimize the risk of exposing the individual's SSN.

PHAs are encouraged to minimize the number of tenant records that contain documents which display the full nine-digit SSN. PHAs are permitted to maintain EIV income reports in the tenant file for the duration of tenancy, and no longer than three years from the end of participation date.

Exhibit 1: Example of an individual with an EIV identity verification status of **Verified**.

Household Members

Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-0397	FLOYD		XX/XX/1942	69	Head	Verified

Exhibit 2: Example of an individual with an EIV identity verification status of **Failed**.

Household Members

Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-0681	Lori		XX/XX/1954	58	Head	Failed

Exhibit 3: Example of an individual with an EIV identity verification status of **Pending.**

Household Members

Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-3273	JOHN		XX/XX/1969	42	Head	Pending

Exhibit 4: Example of an individual with an EIV identity verification status of **Excluded.**

Household Members

Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-3027	zrizn	AVWMZMIVS	XX/XX/1945	67	Head	Verified
***-**-0726	zrxfo	AVWMZMIVS	XX/XX/1970	41	Other Adult	Excluded
***-**-0954	zilwzhr	AVWMZMIVS	XX/XX/1995	16	Other youth under 18	Verified
***-**-0205	luolwz	AVWMZMIVS	XX/XX/2002	10	Other youth under 18	Verified

Exhibit 5: Example of an individual with an EIV identity verification status of **Deceased**.

Household Members

Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
***-**-3872	Dorothy		XX/XX/1934	78	Head	Deceased
***-**-7962	Sammuel		XX/XX/1983	28	Live-in aide	Verified

9. **Invalid SSNs.** An invalid SSN is an SSN that SSA has never assigned. SSA has never assigned an SSN with the first three digits of: 000, 666, or 900 series (numbers within the 900-999 range). Additionally, prior to June 25, 2011, SSA never assigned an SSN with the

first three digits of: 000, 666, 772, 800, or 900 series. SSA has never assigned an SSN with the second two digits of 00 or the last four digits of 0000. For additional information on ways to determine if an SSN is valid, visit SSA's website: http://www.socialsecurity.gov/employer/ssnvhighgroup.htm.

If you suspect someone of committing fraud, waste, or abuse against SSA, report it to SSA's Office of Inspector General (OIG) by mail, fax, or phone.

U.S. Mail:	Social Security OIG Hotline P.O. Box 17785 Baltimore, Maryland 21235
FAX:	410-597-0118
Telephone:	1-800-269-0271 from 10:00 a.m. to 4:00 p.m. Eastern Standard Time
TTY:	1-866-501-2101 for individuals that are speech and/or hearing impaired

10. **Individuals without an assigned SSN.** It is not uncommon for certain individuals to not have an SSA-assigned SSN. Below is a listing of such individuals, which is not all-inclusive:

    a. U.S. newborn children (eligible citizens - these individuals will be issued an SSN upon SSA confirmation of birth).

    b. Noncitizens lawfully present in the U.S. (ineligible noncitizens - these individuals will be issued an SSN upon SSA confirmation of the individual's DHS documentation or confirmation that the individual is required by law to provide an SSN to receive general assistance benefits that they already have qualified for).

    c. Noncitizens unlawfully present in the U.S. (ineligible noncitizens - typically, these individuals cannot be assigned an SSN).

    PHAs are required to use the Public and Indian Housing Information Center (PIC) Tenant ID Management tool to generate a unique identifier (commonly referred to as an alternate ID (ALT ID)) for those individuals who have not been assigned an SSN. A job aid for use of the PIC Tenant ID Management tool is available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/ts.

    Contact the PIC Coach in your local HUD office if you need assistance with PIC.
    Once an individual discloses an SSN, the PHA must use the Tenant ID Management tool to replace the ALT ID with the disclosed SSN within 30 calendar days of receipt of the SSN.

    Note: SSA requires that an individual who has never been issued a SSN card or has lost their SSN card, complete Form SS-5 – *Application for a Social Security Card* to request an original or replacement SSN card or change information on his/her SSA record. The form is available online atwww.socialsecurity.gov, or can be obtained at the local SSA office.

11. Individual Taxpayer Identification Number (ITIN). An ITIN is a taxpayer identification number for **Federal tax purposes only** for certain non-residents and resident noncitizens, their spouses and dependents, who cannot obtain an SSN. The ITIN begins with the number "9" and is formatted like a SSN (9XX-XX-XXXX). However, the ITIN is **not** an SSN and PHAs must **not** report the ITIN on line 3n of the form HUD-50058. PHAs are required to use the Tenant ID Management tool to replace any reported ITIN on line 3n of the form HUD-50058 with an SSN or an ALT ID.

ITINs do not entitle a noncitizen to social security benefits, create any inference regarding a noncitizen's immigration status, or give a noncitizen a right to work in the U.S.

12. Addition of a New Household Member. When a participant requests to add a new household member, who is at least 6 years of age or is under the age of six and has an SSA-assigned SSN, to the family, the participant must disclose the SSA-assigned SSN and provide the PHA with the documents referenced in Paragraph 6 of this notice at the time of such request, or at the time of processing the interim or annual reexamination of family income and/or composition. If the family is unable to provide the required documentation of the SSN, the PHA shall not add the new household member to the family composition until the family provides such documentation. The PHA is not authorized to generate an ALT ID for the affected household member.

When a participant requests to add a new household member, who is under the age of six and does not have an SSA-assigned SSN, the participant must disclose the SSA-assigned SSN and provide the PHA with the documents referenced in Paragraph 6 of this notice within 90 calendar days of the child being added to the household.

If the family is unable to disclose and provide evidence of the SSN within 90 calendar days, the PHA is required to grant the family an additional 90-day period to comply with the SSN disclosure and documentation requirement, **only if** the PHA determines the family was unable to comply with the requirements due to circumstances that could not have reasonably been foreseen and were outside the control of the family. Examples include but are not limited to: delayed processing of SSN application by SSA, natural disaster, fire, death in family, etc.

The child is to be included as part of the assisted household and is entitled to all the benefits of being a household member during the allotted time for the family to comply with the SSN disclosure and documentation requirements. The PHA is required to generate an ALT ID as referenced in Paragraph 10 of this notice. Upon expiration of the provided time period, if the family has not complied with the SSN disclosure and documentation requirements, the PHA **must** terminate the entire family's tenancy or assistance, or both.

13. Penalties for Failure to Disclose and/or Provide Documentation of the SSN. In accordance with 24 CFR §5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

a. **Applicants.** The PHA must deny the eligibility of an assistance applicant if s/he (including each member of the household required to disclose his/her SSN) does not disclose a SSN and/or provide documentation of such SSN. However, if the family is

otherwise eligible to participate in the program, the family may maintain his/her position on the waiting list for the time determined by the PHA. The PHA should prescribe in its policies, the maximum time the family may remain on the waiting list, pending disclosure of requested information. If all household members have not disclosed their SSN at the time a unit becomes available, the PHA must offer the available unit to the next eligible applicant family on the waiting list.

Applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals, under 24 CFR §882, may be admitted to the program without providing the requested documentation (prior to or at admission), however, the individual must provide the PHA with such documentation within 90 calendar days from the date of admission. The PHA may grant the individual one 90-day extension, if in its discretion, determines that the individual's failure to comply with the SSN documentation requirement was due to unforeseen circumstances and outside the control of the family. If upon the expiration of the provided time period, the individual fails to comply with the SSN disclosure and documentation requirements, the PHA must terminate the individual's tenancy or assistance, or both.

b. **Participants.** The PHA must terminate the assistance of Section 8 program participants (the entire household) and terminate the tenancy of Public Housing participants (the entire household) if s/he (including each member of the household required to disclose his/her SSN) does not disclose his/her SSN and provide the required documentation. However, if the family is otherwise eligible for continued assistance or tenancy in the program, the PHA, at its discretion, may defer the family's termination and provide the family an opportunity to comply with the requirement within a period **not to exceed** 90 calendar days from the date the PHA determined the family noncompliant with the SSN disclosure and documentation requirement, only if the PHA determines:
   i. The failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside the control of the family; and
   ii. There is a reasonable likelihood that the family will be able to disclose the SSN and provide such documentation of the SSN by the deadline.

If the family is unable to comply with the requirements by the specified deadline, the PHA must terminate the entire family's tenancy or assistance, or both. The PHA must deny admission or terminate the family's tenancy or assistance, or both, if the family submits falsified SSN documentation.

14. PHA Penalties for Noncompliance. PHAs are required to ensure compliance with SSN disclosure, documentation, and verification requirements outlined in this notice and HUD regulations, including the enforcement of penalties for a family's failure to comply with the HUD requirements. PHAs may be subject to sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculation or both as a result of a PHA's noncompliance and/or enforcement of the SSN disclosure, documentation, and verification requirements outlined in this notice and the applicable HUD regulations.

15. **Third Party Verification Requirement.** PHAs are required to comply with admission and occupancy requirements for Public Housing under 24 CFR §960.259(c)(1) and Section 8 under 24 CFR §982.516(a)(2), which require PHAs to obtain and document in the family/tenant file, third party verification of the following factors, or document in the file why third party verification was not available: (1) reported family annual income; (2) the value of assets; (3) expenses related to deductions from annual income; and (4) other factors that affect the determination of adjusted income or income-based rent.

    It is the Department's position that an SSA benefit verification letter (dated within the last 60 days of the PHA request date for information or within the PHA-tenant interview date) provided by the family or an undisputed EIV ***Income Report*** which displays the current social security benefit amount is third party verification. No additional verification is required by the PHA. SSA has requested that PHAs refrain from submitting requests to SSA to verify that a family is **not** receiving social security benefits. Should neither document be available or there is a conflict, refer to PIH Notice 2018-18, dated October 26, 2018 (or any successor notice).

16. **Third Party Verification of SS/SSI Benefits of Applicants and Household Members.** EIV does not contain SS and SSI benefit information of applicants for HUD's rental assistance programs. PHAs must ask applicants to provide a copy of their SS and/or SSI benefit letter, dated within the last 60 calendar days, for each household member that receives SS and/or SSI benefits. Do not send applicants to SSA offices if they do not have this information. Instead:

    a. While meeting with the applicant, help the applicant request a benefit verification letter from SSA's website, Social Security Online, at: www.socialsecurity.gov. This service is free and SSA will send the letter to the applicant within 10 business days. To access the site for requesting benefit verification letters, go to the Social Security Online front page, click on the *Online Services* link; click on the applicable link. For example: *If you get Social Security benefits or have Medicare you can,* then click on the *Get your benefit verification letter* link; **or**, *if you get Supplemental Security Income (SSI) you can*, then click on the *Get your benefit verification Letter* link and follow the instructions on the *Information about the Proof of Income Letter* page. Assist the applicant in answering questions and explain how the applicant should provide the letter to your office; **or**

    b. Ask the applicant to request a *Proof of Income Letter* from SSA's toll-free number 800-772-1213. Persons with speech or hearing impairments may call SSA's toll-free telephone typewriter (TTY) number 800-325-0778, Monday through Friday, between 7:00 a.m. and 7:00 p.m.

       Note: SSA encourages SS and SSI recipients to use SSA's web site rather than the toll-free number to request *Proof of Income* letters.

    c. The PHA must obtain the original SSA benefit letter from the individual, make a photocopy of the document for the PHA file and return the original document to the individual. The PHA is required to use the gross benefit amount reported on the SSA *Proof of Income Letter* to calculate annual income from social security benefits.

17. Third Party Verification of SS/SSI Benefits of Participants and Household Members. **SSA-provided** SS/SSI benefit information for participants and household members, who have validated personal identifiers (the individual's identity verification status in EIV is **Verified**), is available from HUD's online EIV system, which can be accessed by authorized PHA staff at: https://hudapps.hud.gov/HUD_Systems.

a. PHAs are required to use EIV to verify SS/SSI benefits of current participants and household members. PHAs who do not currently have access to EIV must contact their local HUD field office to register for access to the EIV system. PHA EIV access is set up by the PHA's designated EIV User administrator and approved by the EIV Coordinator in the local HUD office. Information regarding HUD's EIV system is available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/uivsystem.

   PHAs are required to view the EIV ***Income Report*** and confirm with the tenant that the current listed benefit amount is correct. If the tenant agrees with the current EIV-reported amount, the PHA is required to use the EIV-reported gross benefit amount to calculate annual income from social security benefits.

b. If the tenant disputes the EIV-reported benefit amount, the PHA is required to request the tenant to provide a current (dated within the last 60 calendar days) SSA *Proof of Income Letter*. If the tenant is unable to provide the requested document, the PHA is required to follow the instructions under *Third Party Verification of SS/SSI Benefits of Applicants and Household Members* (see Paragraph 16 of this notice). The PHA is required to use the gross benefit amount reported on the SSA *Proof of Income Letter* to calculate annual income from social security benefits.

c. If the tenant's benefit information is **not** available in the EIV system, the PHA is required to follow the instructions under *Third Party Verification of SS/SSI Benefits of Applicants and Household Members* (Paragraph 16 of this notice). The PHA is required to use the gross benefit amount reported on the SSA *Proof of Income Letter* to calculate annual income from social security benefits.

   Note: It is possible for EIV to not display SS/SSI benefit information although the individual has been receiving benefits for years. EIV displays only benefit information that has been received from SSA.

d. Photocopies of social security checks or bank statements are **not** acceptable forms of verification for SS/SSI benefits because the dollar amount listed may not be the gross benefit amount.

   Note: SS/SSI benefit information in the EIV system is updated every three months in accordance with the below schedule during the 1st and 15th of the month. Income information is posted to the family's individual EIV ***Income Report*** (accessible by using EIV's *Income Information By Head of Household function*). Recently posted SSA

income information during the work week (Monday through Friday) will **not** be available via batch EIV ***Income Reports*** (accessible by using EIV's *Income Information By Reexamination Month* function) until successful completion of EIV's weekend summarization job which posts updated information to all batch verification reports every Saturday morning.

SS/SSI benefits are increased annually to reflect the SSA-approved cost of living adjustment (COLA) for all beneficiaries by December 31st in the EIV system. However, due to the large volume of data processed by the Department, there may be a delay in updating the new SS/SSI benefit amounts until January 15.

HUD-SSA Computer Matching Schedule	
PHA State	**Month Matched**
AK, DC, DE, GQ, HI, IA, IN, KS, LA, ME, NC, NE, NH, NJ, NV, OH, RI, SD, TN, TQ, TX, UT, VQ, VT, WV, WY	January, April, July, October
AL, FL, GA, ID, IL, KY, MD, MI, MO, ND, NY, VA	February, May, August, November
AR, AZ, CA, CO, CT, MA, MN, MS, MT, NM, OK, OR, PA, RQ, SC, WA, WI	March, June, September, December

18. **SS and SSI Benefit Amounts Reported in EIV.** All Federal SS and SSI benefit amounts are reported in EIV as whole dollar amounts. By law, SSA rounds all benefit amounts down to the next lower whole dollar. As such, the SS and SSI benefit amount listed on an SSA *Proof of Income Letter* may differ from what is reported in EIV. For example, an SSA benefit letter may list the monthly benefit amount as $450.80 and EIV will display the amount as $450.00. This disparity is unsubstantial and typically has no impact on the family rent contribution amount. However, to ensure consistency in the determination of annual SS and SSI income, PHAs are required to use the EIV-reported SS and SSI benefit amounts unless the tenant disputes the EIV-reported amount. In instances in which the family disputes the EIV-reported SS and/or SSI benefit amount, PHAs are required to follow the verification requirement outlined in Paragraph 16 of this notice and use the full amount listed on the SSA *Proof of Income Letter* and round the final result of the calculation and report on the applicable line(s) of the form HUD-50058 as outlined below.

    Note: When calculating any monetary amount always use the full dollar amount and cents and round the final result.

19. **Reporting of monetary figures on the form HUD-50058.** Enter only whole dollar amounts. Do not include cents, commas, or dollar signs. Enter $4,500.00 as 4500. Round each monetary amount up when a number is $0.50 or above. Enter $4,500.80 as 4501. Round each monetary amount down when a number is $0.49 or below. Enter $4,500.25 as 4500.

20. **Applying SSA COLA to Current Annual and Interim Reexaminations.** Each year during the month of October, SSA announces the COLA by which Federal SS and SSI benefits are

adjusted to reflect the increase, if any, in the cost of living as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers prepared by the Bureau of Labor Statistics. The purpose of the COLA is to ensure that the purchasing power of SS and SSI benefits are not eroded by inflation. The Federal COLA does **not** apply to State-paid disability benefits. Additional information regarding the SSA COLA is available online at www.socialsecurity.gov.

Effective the day after SSA has announced the COLA, PHAs are required to factor in the COLA when determining SS and SSI annual income for all annual reexaminations and interim reexaminations (in accordance with PHA-established policy) of family income which have **not** yet been completed **and** will be effective January 1st or later of the upcoming year.

Example: Bob Jones currently receives $500 a month (SS benefit). You are currently working on his reexam (in November 2011) which is effective 02/01/2012. The PHA must determine annual SS income as follows:

- Current benefit amount: $500 X 3.6% [or 0.036] (COLA rate) = **$18.00 COLA**
- New gross SS benefit effective 01/01/2012 = **$518.00** ($500 current benefit + $18 COLA)
- Annual income effective 02/01/2012: $518 X 12 = **$6,216.00**.

21. Treatment of SSA Overpayment Deductions from Social Security Benefits.

SSA Overpayment Deductions. An overpayment occurs when SSA pays an individual more than s/he should have been paid. If this happens, SSA will notify the individual and his/her designated representative payee, if applicable. Recovery of an overpayment is made by withholding the monthly social security check until the overpayment is paid in full (individuals receiving SS benefits), unless the individual requests a lesser withholding amount and SSA approves the request. Full withholding would start 30 days after SSA notification of the overpayment. SSA begins deducting money (for overpayment recovery) from SSI payments at least 60 days after SSA notification of the overpayment. Generally, SSA will withhold 10 percent of the maximum Federal SSI benefit rate each month. However, an individual may request that less be taken from their benefit, or an individual may ask to pay back the overpayment at a rate greater than 10 percent.

Regardless of the amount withheld to repay SSA the overpayment amount, or the length of the anticipated withholding period, the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount. The PHA should be cognizant of the SSA-determined overpayment amount and length of time the reduced payment will occur, to ensure the family's accurate rent contribution for the duration of reduced income; however, circumstances may arise affecting the end date of the withholding period, causing it to go on longer than anticipated. See examples below.

Note: A Social Security overpayment can be withheld from an SSI payment due to the beneficiary.

Example 1: Bob's gross monthly SSI benefit is $500 (or $6,000 annually). On February 1, 2012, Bob brings in a letter showing that SSA has determined that he has been overpaid by

$100 and will begin deducting 10% ($50) from his monthly check on March 1, 2012. Note that this deduction would occur for **only 2 months** (March and April). The PHA would calculate annual income at $5,400 ($500 - $50= $450 X 12) and Bob's rent contribution should be changed for two months; however, once the deduction ends (May 2012), annual income should be recalculated again, and the full SSI benefit should again be used to calculate annual income.

Example 2: Sue's gross monthly SSI benefit is $500 (or $6,000 annually). On February 1, 2012, Sue brings in a letter showing that SSA has determined that she has been overpaid by $2,000 and will begin deducting 10% ($50) from her monthly check on March 1, 2012.

Note that this deduction would occur for 40 months.

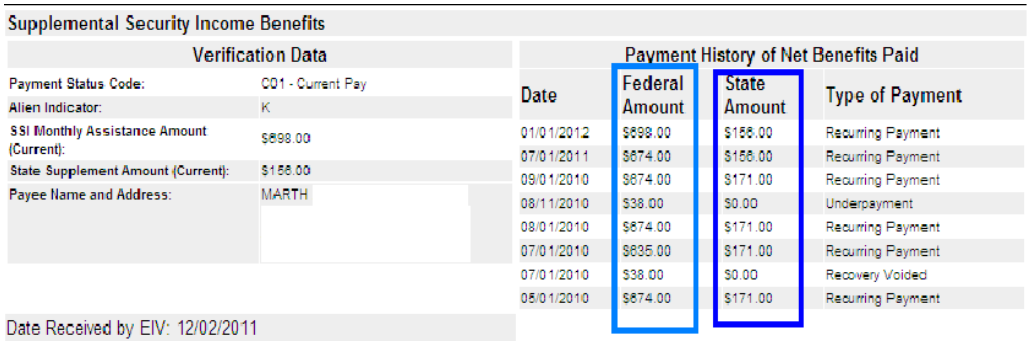
The PHA would calculate annual income at $5,400 ($500 - $50 = $450 X 12) and Sue's rent contribution should be changed and effective until the next reexamination of income, at which time a new redetermination would be made based on current information and documentation.

22. Additional Information Regarding Supplemental Security Income (SSI).

This paragraph provides PHAs with additional information regarding federal SSI benefits paid by SSA which should be considered by the PHA at the time a family or individual applies for initial or continued participation in a HUD rental assistance program. Additional information is available online at: http://www.ssa.gov/ssi/spotlights/spot-living-arrangements.htm and http://www.ssa.gov/ssi/text-benefits-ussi.htm.

a. Generally, prior to the admission into a HUD rental assistance program, individuals who live in institutions such as hospitals, nursing homes, prisons or jails are not eligible for SSI or are only eligible for a maximum of $30 a month (some States supplement this $30 benefit). However, this reduced SSI benefit amount may increase once the individual reports his or her new residency address to SSA. Accordingly, PHAs must consider the increased benefit amount when conducting subsequent reexamination of family income in accordance with HUD requirements and the PHA's policies.

b. Some States supplement the Federal SSI benefit with additional payments. The following States do not supplement the Federal SSI benefit with additional payments: Arkansas, Arizona, Mississippi, North Dakota, Tennessee, and West Virginia. EIV will display (as reflected in the below EIV screenshot) the State-paid SSI amount as supplied by SSA for individuals that reside in the following States: California, Delaware, District of Columbia, Hawaii, Iowa, Michigan, Montana, Nevada, New Jersey, Pennsylvania, Rhode Island, and Vermont. Accordingly, PHAs must include State-paid SSI benefits in addition to Federal-paid SSI benefits when determining annual income in accordance with HUD requirements and the PHA's policies.



Supplemental Security Income Benefits

Verification Data

Payment Status Code:	C01 - Current Pay
Alien Indicator:	K
SSI Monthly Assistance Amount (Current):	$698.00
State Supplement Amount (Current):	$156.00
Payee Name and Address:	MARTH

Date Received by EIV: 12/02/2011

Payment History of Net Benefits Paid

Date	Federal Amount	State Amount	Type of Payment
01/01/2012	$698.00	$156.00	Recurring Payment
07/01/2011	$674.00	$156.00	Recurring Payment
09/01/2010	$674.00	$171.00	Recurring Payment
08/11/2010	$38.00	$0.00	Underpayment
08/01/2010	$674.00	$171.00	Recurring Payment
07/01/2010	$635.00	$171.00	Recurring Payment
07/01/2010	$38.00	$0.00	Recovery Voided
06/01/2010	$674.00	$171.00	Recurring Payment

23. How to Ensure Availability of Social Security Benefit Information in the EIV System. The availability of SS and SSI benefit information in the EIV system depends on PHA data quality and timely submission of form HUD-50058 to the PIC. PHAs must ensure that data entered in section 3 of the form HUD-50058 (i.e., household members' name, date of birth and social security number) is complete and accurate. The first and last name of each household member reported on the form HUD-50058 must be listed **exactly** as it is listed on SSA records.

If a family's form HUD-50058 is not successfully submitted to PIC or if it has been 15 or more months since the effective date listed on the current form HUD-50058 available in PIC, HUD will not initiate computer matching for these individuals and new income information will **not** be available in EIV.

In accordance with 24 CFR §5.233(a)(2)(ii), PHAs are required to use EIV to reduce administrative and subsidy payment errors. As such, PHAs are required to use EIV's ***Identity Verification Report*** on a monthly basis to correct noted deficiencies within 30 calendar days and improve the availability of income information in EIV. This report contains two reports (*Failed EIV Pre-Screening and Failed SSA Identity Test*), which can help the PHA improve the availability of income information and assist the PHA in identifying tenant personal identifiers that require correction. The ***Identity Verification Report*** contains a third report called *Pending Verification*.

Below is a summary of how these reports can be beneficial to the PHA.

a. **Failed EIV Pre-screening Report:** Informs the PHA of any tenant who has failed HUD's EIV pre-screening process due to incorrect personal identifiers (date of birth, surname, and/or SSN) or invalid form HUD-50058 transmitted (e.g. effective date of action is 15 or more months ago – an indication of a possible overdue annual reexam). Household members with a PIC-generated ALT ID will appear on EIV's ***Immigration Report***. Tenants that appear on this report are excluded from the data matching process with the SSA and Department of Health and Human Services' (HHS') National Directory of New Hires (NDNH). Thus, HUD will not request or obtain income information for these individuals.

   PHA staff is required to review this report on a monthly basis; if applicable, obtain appropriate documentation from the tenant, update section 3 of the form HUD-50058,

accordingly, and successfully transmit a corrected or updated form HUD-50058 to PIC; or use the PIC Tenant ID Management tool to replace incorrect SSNs, ITINs, or ALT IDs within 30 calendar days of receiving the SSN documentation.

For invalid (PIC-rejected) forms HUD-50058, PHA staff is required to review the PIC Error Submission report and take appropriate action to correct the error and successfully submit a corrected form HUD-50058 to PIC in accordance with the PIC Technical Reference Guide available online at: https://www.hud.gov/offices/pih/systems/pic/50058/pubs/trg.

Pages 184-186 provide guidance on how to correct specific PIC errors. The PIC Coach within the PHA's designated local HUD office is available to assist with PIC. Additional PIC help resources are available online at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/gethelp.

b. **Failed SSA Identity Test Report:** Informs the PHA of any tenant whose identity cannot be confirmed by SSA due to incorrect personally identifiable information (PII) (date of birth, surname, and/or SSN) recorded in section 3 of the form HUD-50058, which do not match the personal identifiers reported in SSA's database or SSA has determined that a tenant is deceased. HUD verifies all tenant-reported PII against the SSA database. For certain tenants, SSA will provide the date of birth and/or social security number as reported in SSA's files. PHAs are required to update the form HUD-50058 with the SSA-provided information. As outlined in Paragraph 10 of this notice, PHAs must use the PIC Tenant ID Management tool to replace incorrect SSNs or ALT IDs with the correct SSN. If a tenant disputes the SSA-provided information, the tenant must resolve this disparity with SSA.

PHA staff is required to review this report monthly and if applicable, obtain appropriate documentation from the tenant, update section 3 of the form HUD-50058, accordingly, and successfully transmit a corrected form HUD-50058 to PIC within 30 calendar days. Effective April 30, 2012, the ***Failed SSA Identity Test Report*** (and the ***Income Report***) will include the date SSA verified the tenant PII, as reflected in the below EIV screenshot. This feature will allow HUD and PHAs to monitor timely implementation of corrective action to address incorrect PII.

Verification Reports >> Report Selection >> PHA Statistics

Failed EIV Pre-Screening | Failed SSA Identity Test | Pending Verification

Failed SSA Screening as of 12/31/2011

Participant Code:	OH001 Columbus MHA
Program Type:	All PIH Programs
Reexamination Month:	All
Households that Failed Verification:	102
Action Type:	All

Download in Excel
Printer Friendly Version

Next Group
1 - 50 of 102 Households Last Page

HOH SSN ***-**-2273 | HOH Name fruzh URIZ SH | HOH DOB 12/31/1976

Member SSN	Member Name	Member DOB	Failed Verification Description	Date of Verification
***-**-0083	rszofwyz SZIZU	12/07/2010	Verification failed - SSN not found in SSA records	12/04/2010

HOH SSN ***-**-3404 | HOH Name vshizp NRIZPRWYZ | HOH DOB 12/31/1960

Member SSN	Member Name	Member DOB	Failed Verification Description	Date of Verification
***-**-3404	vshizp NRIZPRWYZ	12/31/1960	Verification failed - Date of birth matched, but surname did not match with SSA records	12/04/2008
***-**-8235	vnirw ZMRNZ	01/07/1971	Verification failed - Date of birth matched, but surname did not match with SSA records	12/04/2008
***-**-4597	vnirw MZNSZIFWYZ	07/22/1998	Verification failed - Date of birth matched, but surname did not match with SSA records	12/04/2008
***-**-9825	vshihp ROHZ	05/28/1994	Verification failed - SSN not found in SSA records	12/04/2008

c. **Pending Verification Report:** This report identifies households and household members in which the tenant PII is scheduled to be matched against SSA's database with HUD's next monthly computer matching effort in accordance with the computer matching schedule in Paragraph 17 of this notice.

Identity Verification Report: Failed SSA Identity Test Report Error Messages			
No.	**Error Message Description**	**Error Message Explanation**	**Required PHA Corrective Action**
1	SSN is verified; **individual is deceased** **Or** SSN is verified; **individual is deceased MM/DD/YYYY**	The tenant's SSN has been verified by SSA and the individual is deceased. If a date follows the error message, this is the date of death as reflected in SSA records.	Contact tenant's adult family member or next of kin to confirm death. Upon confirmation of death, update family composition accordingly. If a single member deceased household, take appropriate action in accordance with HUD administrative guidance, program requirements and PHA-established policies, including termination of HAP contract (Section 8 only) and transmit an End of Participation (EOP) (action type 6) form HUD-50058. If applicable, recover HAP overpayment from landlord.
2	Verification failed - SSN not found in SSA records XXXXXXXXX	The tenant SSN recorded on line 3n of the form HUD-50058 is not a valid number issued by SSA. However, the SSN reflected in SSA records is listed at the end of the error message.	Update line 3n of form HUD-50058 with the SSA-provided SSN.

Identity Verification Report: Failed SSA Identity Test Report Error Messages			
No.	**Error Message Description**	**Error Message Explanation**	**Required PHA Corrective Action**
3	Verification failed – SS/SSI benefits cannot be disclosed due to **discrepancy in date of birth MM/DD/YYYY**	The tenant is receiving SS/SSI benefits; however, SSA cannot disclose the benefit amount because the date of birth recorded on line 3e of the form HUD-50058 does not match the DOB in SSA records is listed at the end of the error message.	Request the tenant to provide a current SS/SSI benefit letter. Update line 3e of form HUD-50058 with the SSA-provided DOB. The tenant must follow-up with SSA to dispute the SSA-provided DOB.
4	No benefits reported by SSA **MM/DD/YYYY**	No benefits reported by SSA. The date of birth recorded on line 3e of the form HUD-50058 does not match the DOB in SSA records. However, the DOB reflected in SSA records is listed at the end of the error message.	Update line 3e of form HUD-50058 with the SSA-provided with SSA to dispute the SSA provided DOB.
5	Verification failed – Date of birth matched, but surname did not match with SSA records or Surname does not match; DOB was checked	The surname recorded on line 3b of the form HUD-50058 is not the same surname reflected in SSA's records.	Ask the tenant to provide documentation (SSN card, birth certificate, State issued identification card, marriage license or court documents) of the other name he/she is using. Update line 3b of form HUD-50058 with the correct surname.
6	Verification failed – SS/SSI benefits cannot be disclosed due to **discrepancy in name**	The tenant is receiving SS/SSI benefits; however, SSA can not disclose the benefit amount because the PIC-reported SSN is not assigned by SSA to the PIC-reported tenant name.	Request the tenant to provide a current SSN assignment letter or SS/SSI benefit letter. Ask the tenant to provide documentation (SSN card, birth certificate, State issued identification card, marriage license or court documents) of the other name he/she is using. Update line 3b and/or 3c of form HUD-50058 with the correct first name and/or surname.

Identity Verification Report: Failed SSA Identity Test Report Error Messages			
No.	**Error Message Description**	**Error Message Explanation**	**Required PHA Corrective Action**
7	Verification failed – SSN not found in SSA records **XXXXXXXXX**	The tenant's SSN recorded on line 3n of the form HUD-50058 is not a valid number issued by SSA. However, the SSN reflected in SSA records is listed at the end of the error message.	Update line 3n of form HUD-50058 with the SSA-provided SSN.
8	Verification failed – **SSN not found** in SSA records **or SSN is not in file**	The tenant's SSN recorded on line 3n of the form HUD-50058 is not a valid number issued by SSA or listed in SSA records.	Request original SSN card from tenant. Confirm SSN displayed on the card matches the SSN reported on line 3n of form HUD-50058. If the numbers do not match, make the necessary correction on line 3n of form HUD-50058. For continued SSN failures, notity HUD, OIG or other law enforcement agency.

Note: If SSA's records are wrong, only the tenant can request SSA to correct his/her record, by completing and submitting form SS-5 *Application for a Social Security Card* to the local SSA office.

Identity Verification Report: Failed EIV Pre-screening Report Error Messages			
No.	**Error Message Description**	**Error Message Explanation**	**Required PHA Corrective Action**
1	Failed DOB check.	The date of birth is blank or null.	Enter DOB on line 3e of the form HUD-50058. Ensure only numbers are recorded.
2	Failed effective date check.	The effective date of action is more than 15 months old.	Enter a current effective date on line 2b of the form HUD-50058. The PHA must ensure that it has completed a current reexam of family income and composition.
3	Failed last name check.	The last name is blank or null.	Enter last name on line 3b of the form HUD-50058. Ensure only alpha characters are recorded. Do not include special characters such as -, ~, `, or '.

4	Failed SSN check.	The SSN is not numeric or all 9s or LIKE {000%} or LIKE {___00%} or LIKE {%0000}.	Enter valid SSN on line 3n of the form HUD-50058. Do not use repetitive numbers, as directed in the current Form HUD-50058 Instruction Booklet, if tenant has not disclosed an SSN. The PHA is required to generate an ALT ID for affected individuals as outlined in Paragraph 9 of this notice. **Note:** This error message will occur for any individual with a PIC-generated ALT ID. If the individual is a U.S. Citizen/National or eligible noncitizen, the PHA is required to follow up with the family to obtain documentation of the SSN. If the individual does not contend to have eligible immigration status (and coded as an ineligible noncitizen on the form HUD-50058), no further action is required by the PHA.

PHAs are authorized to implement the below HUD-approved workaround for any overdue reexamination which the PHA has not completed due to pending litigation.

Authorized Workaround:

1. The PHA has the discretion to submit the following information to their local HUD field office but ONLY by using encrypted email:

a. PHA Certification signed and dated by the Executive Director or designated official on the PHA's letterhead, which states the following:

i. I certify under the penalties of perjury that the attached list of head of household (HOH) names have an overdue reexamination due to pending litigation initiated by the Housing Authority or tenant. I agree to submit an updated form HUD-50058 to PIC, in accordance with HUD guidance, once the court has issued a final order or the family discontinues participation in a PIH rental assistance program, whichever occurs first.

ii. I understand that HUD may request copies of court proceedings filed with the court and agree to furnish such documents and any other documents associated with the pending litigation upon written request of a HUD official.

b. A listing of HOHs in which there is pending litigation, the type of pending litigation pending (e.g., wrongful termination, breach of lease, tenant holding overaction, etc.) the date the litigation began and court-assigned case number.

i. PHAs must download the EIV ***Identity Verification/Failed EIV Pre-screening*** report into Excel (prior to implementing action item 3 below) to create the

listing. However, the PHA must delete all tenant social security numbers before sending the file to HUD.

ii. Add the following columns to the report and provide the applicable information:
> Date Litigation Initiated
> Court-Assigned Case Number
> Type of Litigation

2. The PHA will successfully submit an action type 3 (interim reexamination) form HUD-50058 to PIC in which **line 2b, effective date** contains a current date; line 2i, projected effective date of next reexamination is equal to a date 12 month from the date listed on line 2b; and any line between 2q – 2u (PHA use only) contains the words "Pending Litigation."

23. When the Identity Verification Report is Updated. Below is guidance to explain how the Identity Verification report is updated.

Failed EIV Pre-Screening Report

a. When the PHA corrects or updates information reported on section 2 or 3 of the form HUD-50058, EIV copies the data from PIC on a nightly basis. However, the ***Failed EIV Pre-Screening*** Report is updated on a weekly basis, on every Saturday morning upon successful completion of EIV's weekend summarization job. PHAs are able to view the updated report on the following Monday.

Failed SSA Identity Test Report

b. When the PHA corrects or updates PII reported on section 3 of the form HUD-50058, EIV copies the data from PIC on a nightly basis. However, the ***Failed SSA Identity Test*** Report is updated once the following actions occur:
   i. The updated PII is submitted to SSA for verification in the month following the month in which the updated form HUD-50058 was successfully submitted to PIC; and SSA returns the results (verified, failed, or deceased) of the data matching process to EIV; or
   ii. SSA updates the PII reported on its records and this information matches the PII reported on the form HUD-50058 when HUD submits the tenant PII to SSA for verification; and
   iii. Successful completion of the EIV's weekend summarization job.

After the above actions occur, PHAs are able to view the updated report the following Monday.

Note: When an updated form HUD-50058 to correct a tenant's PII is successfully submitted to PIC or a tenant's SSN is corrected using the PIC Tenant ID Management tool, the tenant's EIV identity verification status will change to **Pending** from **Failed**. This action is confirmation that the PHA has successfully submitted an updated form HUD-50058 to PIC and that HUD has flagged the

tenant record for data matching with SSA during the next monthly data matching process. For example, updated PII on forms HUD-50058 successfully submitted to PIC in January will be matched with SSA in February. These updated households will **not** appear on the ***Pending Verification Report*** unless these households were scheduled for the original quarterly computer matching process in accordance with the *HUD-SSA Computer Matching Schedule* in Paragraph 17 of this notice.

24. Penalties for Non-Compliance with Use of EIV's Identity Verification Report. HUD will monitor each PHA's ***Identity Verification Report*** on a quarterly basis and notify affected PHAs of the need to correct deficiencies and if requested by HUD, provide documentation and/or certification of PHA-implemented corrective action(s). PHAs may be subject to sanctions for noncompliance with this notice.

25. For inquiries about this Notice contact: Your local HUD field office or Rochelle Katz of HUD Headquarters' Office of Public and Indian Housing, Real Estate Assessment Center Programs at 202-475-4967, or via email at: EIV_HELP@HUD.GOV. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339.

26. Paperwork Reduction. The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB control number(s) 2577-0083 and 2577-0267. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

/s/

Dominique Blom
General Deputy Assistant Secretary
for Public and Indian Housing

8/21/20 PIH 2020-19; Rent Reasonableness - Defining Assisted Units for the Housing Choice Voucher and Project-Based Voucher Programs[1]

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention Of:	**Notice PIH 2020-19**
Public Housing Agencies Public Housing Agencies that Administer the Housing Choice Voucher Program; Owners; Other Grantees	Issued: August 21, 2020 Expires: This notice remains in effect until amended, superseded, or rescinded Supersedes: Notice 2011-46

Subject: Rent Reasonableness – Defining Assisted Units for the Housing Choice Voucher and Project-Based Voucher Programs[1]

I. Purpose

This notice supersedes Notice PIH 2011–46,[2] and updates guidance concerning what is considered an assisted unit under Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) for the purpose of rent reasonableness requirements. This notice does not provide comprehensive guidance concerning rent reasonableness requirements, but focuses on specific rent reasonableness issues. For further information on the rent reasonableness requirements, see HUD regulations 24 CFR 982.507 and 24 CFR 983.303, and the Rent Reasonableness Chapter in the Housing Choice Voucher Guidebook, available at https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Rent_Reasonableness.pdf.

II. Background

As required by Section 8(o) of the U.S. Housing Act of 1937 (the 1937 Act),[3] prior to and during the term of an HCV or PBV Housing Assistance Payments (HAP) contract, the rent to owner for a contract unit must be reasonable. In determining whether rents are reasonable, a Public Housing Agency (PHA)[4] must always ensure that the rent to owner for a unit in which an HCV-assisted or PBV-assisted family will reside does not exceed the rent to owner for comparable unassisted units on the premises.[5] By accepting each

[1] The contents of this document, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.
[2] Notice PIH 2011-46, titled "PHA Determinations of Rent Reasonableness in the Housing Choice Voucher (HCV) Program — Replacement of PIH Notices 2009-51 and 2010-18".
[3] 42 U.S.C. §§ 1437f(o)(10) and 1437f(o)(13)(H).
[4] An independent entity must perform rent reasonableness determinations for units that are PHA-owned, in accordance with 24 CFR §§ 982.352(b)(1)(iv)(A)(1) and 983.303(f)(1).
[5] HUD regulation requirement for HCV-and PBV-assisted units at 24 CFR §§ 982.507 and 983.303, respectively.

monthly housing assistance payment, the owner certifies that the contract rent is not more than the rent charged by the owner for comparable unassisted units in the premises.[6]

Generally, units for which the owner has decided to charge rents that are below what other families are charged, or market-rate rents, are considered unassisted units for purposes of rent reasonableness determinations. Rents for these particular units in the property must be considered when determining whether rent charged by an owner on an HCV- or PBV-assisted unit is reasonable. However, sometimes owners choose to charge below market rents to protect families from a rent increase that results solely from a conversion action impacting the property and the family. These families are often longtime families who had been paying below market rents prior to the conversion action, and, in many cases, elderly families. Under these specific circumstances, and as further described in Section IV.A below, such units would be considered assisted and therefore excluded from a PHAs determination of rent reasonableness and from an owner's certification.

III. Summary of Changes

- **Units in converted properties**. In Notice PIH 2011-46, units in a property undergoing certain Housing Conversion Actions were considered assisted if the unit was occupied by a family on the date of the eligibility event who did not receive a voucher and the owner chose to charge below market rent to the family by offering lower rents, rent concessions, or other assistance. This notice extends the assisted unit standard in PIH Notice 2011-46 to all projects undergoing any conversion action that triggers eligibility for an award of tenant protection vouchers (TPVs), as further described in Section IV.A of this notice. This change will result in consistent application of policy concerning rent reasonableness determinations across all conversion actions that trigger TPVs. It also supports local efforts to protect families from a rent increase due solely to a conversion action.

- **Units with restricted rents**. This notice clarifies that units considered assisted due to a rent restriction remain excluded from rent reasonableness determinations until the PHA is notified by the owner or otherwise determines that the rent restriction has expired, or the restricted rents are no longer below market.

- **Unassisted units**. The policy concerning unassisted units has not changed. However, HUD has refined the language to provide more clarity and has included an example to assist in understanding the policy (see section V.A. of this notice).

IV. Assisted Unit Types and Notice Requirements

Assisted units are typically those units that are assisted under a Federal, State, or local government program. In addition to units assisted under a Federal, State, or local government program, the following units are considered to be assisted and are therefore

[6] Moving-To-Work (MTW) PHAs may modify the rent reasonable requirements pursuant to the authority of their MTW Standard Agreement or MTW Operations Notice, as applicable.

excluded from consideration when a PHA determines rent reasonableness:

A. Units in converted properties.

1. If all of the following conditions apply, a unit is assisted under this category:
    a. The unit is in a property undergoing any of the following conversion actions:
        i. Housing conversion actions that occur in the Multifamily Housing Portfolios and include an owner decision to opt-out of or not renew a Section 8 project-based contract (opt-out); a prepayment of the mortgage or voluntary termination of the mortgage insurance of a preservation eligible property (preservation prepayments); a HUD enforcement action against an owner that involves termination or non-renewal of a Section 8 project-based housing assistance payments; or a HUD property disposition activity;
        ii. Any of the conversion actions covered by Notice PIH 2019-01/H 2019-02, or successor notices, for which the property has received an award of set-aside TPVs; and
        iii. A public housing conversion action including demolitions and/or dispositions approved under Section 18 of the 1937 Act (including demolitions authorized under de minimis authority of such Act); required conversions approved under Section 33 of the 1937 Act; voluntary conversions approved under Section 22 of the 1937 Act; and removals initiated under an awarded Choice Neighborhood Initiative and/or HOPE VI grant;

    b. The unit is occupied by a family who was residing in the unit on the following date (as applicable) and did not receive a TPV as a result of the conversion action:[7]
        i. The date of the eligibility event of the housing conversion action;
        ii. The later of: (a) the date that the TPV funding application is submitted to HUD by the PHA or (b) the date of the triggering event, for set-aside TPV actions; or
        iii. The date of PIH approval of the Public Housing Conversion or the Choice Neighborhood Initiative award date; and

    c. The owner chooses to offer a below market rent or other rent concession (e.g., rent backs or rent credits, free month(s) rent) at the property to the family who does not receive a TPV.

2. For the unit to be considered "assisted," the owner must provide written notice to the PHA. The owner-provided notice must include a list of the covered families,

[7] For example, because the family is ineligible for the voucher. Another example is where the owner accommodates a family's request to remain in the unit unassisted paying the same amount they were paying prior to the conversion, instead of being issued the HCV, because the conversion action causes a family's share of the rent to be more under the HCV/PBV programs (e.g. a family was paying a flat rent under the public housing program and the requirements of the HCV/PBV program would cause the family's share of the rent to increase).

by unit number; a description of the concession; the duration of the lower rents or concessions; and any additional information that the PHA deems necessary to verify the applicability of this section. This notification serves as the owner's certification that all of the conditions described in this section are met.

3. Upon verification of the information submitted by the owner, the PHA must exclude such units from rent reasonableness determinations until notified by the owner that either a covered family has moved from the unit or the rent paid by the family is no longer below market or subject to a rent concession, at which point the unit is no longer excluded from the rent reasonableness determination.

4. An owner of a property that underwent a conversion action prior to the issuance of this notice, and that was not previously covered under PIH Notice 2011-46, may notify the PHA, at the time of a subsequent rent increase for voucher families, of units in the converted property that are considered assisted under this notice. All requirements of this section IV.A must be met, but the owner must also include evidence that the covered families resided in the property on the date of the eligibility event. Once the PHA determines that such units are considered assisted under this notice, the PHA must exclude such units from future rent reasonableness determinations for the duration of the lower rents or concessions or until such time that the family vacates the unit.

B. Units with restricted rents. Units that are restricted by a rent restriction (e.g., a use restriction, law, or court order) that caps rents at a below-market level are considered to be assisted for purposes of rent reasonableness determinations.

The PHA is responsible for verifying the existence and applicability of the rent restriction prior to excluding from the rent reasonableness determination. Such units are excluded from rent reasonableness determinations until the PHA is notified by the owner, or unless the PHA otherwise determines, that the rent restriction has expired, or the restricted rents are no longer below market.

V. Other Rent Reasonableness Requirements. This section addresses rent reasonableness requirements that apply to all HCV and PBV assisted properties, regardless of whether the property underwent a conversion action as described in Section IV of this notice.

A. Unassisted units on the property. An owner who offers a rent concession for *unassisted* units at the property (those not qualifying under Section IV of this notice) must also offer them to HCV/PBV participants.[8] The PHA must use the actual amount of the rent for such unassisted units (that is, the rent with the concession) in determining the reasonable rent amount. For example, an HCV family is looking to rent a unit in Property A. The rent to owner is generally $800, but the owner offers a rent credit (a rent concession) of $100 during the first two months of occupancy. During the initial lease term, the rent amount that the PHA must use for determining the reasonable rent is $700 for two months ($1,400) and $800 for the remaining ten months ($8,000) in a 12-month

[8] 24 CFR §§ 982.507 and 983.303.

period, or $783 (($1,400+$8,000)/12) per month for 12 months.

B. Units occupied by certain employees of the property management company. In some rental markets it is common practice for certain employees of the property management company (e.g., a resident manager) to reside in the property rent-free or at a significantly reduced rent as part of their employment compensation. Under such limited circumstances, the rent for these units does not represent the rent that is charged or would be charged for a comparable unassisted unit and the PHA must not take them into account in making rent reasonableness determinations.

C. Using recent rentals in multifamily properties. In the case of a family moving into a multifamily property, the PHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new families routinely pay higher rents than the rents that longer time families in comparable units may be paying (often due to local rent stabilization programs or ordinances that limit rent increases for existing families).

D. Rent increases. In determining if subsequent rent increases result in rents that are reasonable for units occupied by families under voucher HAP contracts, the PHA must take into consideration any rent-setting policies by the owner for existing families. Any increases in rent over time for HCV/PBV-assisted families must be similar to increases charged to unassisted families who have lived in their units for approximately the same amount of time. In other words, rents for existing HCV/PBV-assisted families may not exceed the rents charged to unassisted families in comparable units who have been in a property for approximately the same amount of time.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements of this notice were assigned OMB Control Number 2577–0169.

/s/
R. Hunter Kurtz, Assistant Secretary
for Public and Indian Housing

1/31/22 PIH 2022-01; Carbon Monoxide Alarms or Detectors in U.S. Housing and Urban Development (HUD)-Assisted Housing

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

OFFICE OF PUBLIC AND INDIAN HOUSING
OFFICE OF HOUSING
OFFICE OF LEAD HAZARD CONTROL
AND HEALTHY HOMES

SPECIAL ATTENTION OF:
Regional Administrators; Directors of HUD Regional, Hub, and Field Offices of Public Housing; Multifamily Regional Center/Satellite Office Directors; Public Housing Agencies; Housing Choice Voucher, Project-based Voucher, Project-Based Rental Assistance, Section 202, and Section 811 Property Owners; Healthy Homes Representatives

NOTICE PIH 2022-01
NOTICE H 2022-01
NOTICE OLHCHH 2022-01

Issued: January 31, 2022
This notice remains in effect until amended, superseded, rescinded.

Cross References:
NOTICE PIH 2019-06
NOTICE H 2019-05
NOTICE OLHCHH 2019-01
Section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6), 42 U.S.C. 1437 et. seq.)

Subject: Carbon Monoxide Alarms or Detectors in U.S. Housing and Urban Development (HUD)-Assisted Housing

I. Purpose

Public housing agencies and authorities (PHAs), and Owners of properties that receive federal rental assistance have an important role to prevent potential loss of life and severe injury associated with carbon monoxide (CO) in housing they own or manage. This notice reminds PHAs and Owners of CO poisoning risks in housing, identifies resources for preventing and detecting CO exposure, and provides notice of Section 101, "Carbon Monoxide Alarms or Detectors in Federally Insured Housing" of Title I of Division Q, Financial Services Provisions and Intellectual Property, of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 2162 (2020) ("the Act"), that requires CO alarms or detectors be installed in certain HUD-assisted housing within two years of enactment.

This notice clarifies that HUD will enforce the requirements instituted by Congress requiring that all Public Housing (PH), Housing Choice Voucher (HCV), Project Based Voucher (PBV), Project Based Rental Assistance (PBRA), Section 202 Supportive Housing for the Elderly (Section 202), and Section 811 Supportive Housing for Persons with Disabilities (Section 811) comply with the International Fire Code (IFC) 2018 standards on the installation of CO alarms or detectors by December 27, 2022. For the full 2018 IFC Code, as well as Chapter 9 and Chapter 11 regarding CO alarms or detectors, please visit https://codes.iccsafe.org/content/IFC2018;

https://codes.iccsafe.org/content/IFC2018/chapter-9-fire-protection-and-life-safety-systems; https://codes.iccsafe.org/content/IFC2018/chapter-11-construction-requirements-for-existing-buildings.

PIH Notice 2019-06[1], HN 2019-05, and Office of Lead Hazard Control and Healthy Homes (OLHCHH) Notice 2019-01 reminded Owners and operators of PH, PBRA, HCV, PBV, and Section 202[2]/811[3] properties to have operational CO detectors, where specified, as required by the state or local law, code, or other regulation.

Additionally, this notice identifies resources for the types of devices to install, ideal placement, maintenance, and monitoring; and is applicable to housing with fuel-fired/burning appliance(s) or an attached garage.

This notice remains in effect until amended, superseded, or rescinded.

II. Definitions

Carbon Monoxide Alarm: A single or multiple station alarm intended to detect carbon monoxide gas and alert occupants by a distinct audible signal. It incorporates a sensor, control components and an alarm notification appliance in a single unit.

Carbon Monoxide Detector: A device with an integral sensor to detect carbon monoxide gas and transmit an alarm signal to a connected alarm control unit.

III. Background

The Act requires the installation of CO alarms or detectors in certain Federally Assisted Housing by December 27, 2022.[4] The Act CO alarms or detectors be installed in each dwelling unit(s) receiving tenant-based or requires project-based assistance or is owned or operated by a PHA or by the owner of a dwelling unit receiving project-based assistance in a manner that meets or exceeds the standards described in Chapters 9 and 11 of the 2018 publication of the International Fire Code (IFC), as published by the International Code Council (ICC).[5]

This notice is being issued to provide notice that the Secretary of Housing and Urban Development will, consistent with the Act, enforce standards relating to CO alarms and detectors and in support of decent, safe, and habitable housing in HUD's low-income housing assistance programs.

HUD recognizes CO poisoning as an important safety issue for families in assisted housing. According to the National Center for Environmental Health, "each year more than 400 Americans die from unintentional CO poisoning not linked to fires, more than 20,000 visit the

[1] https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-06.pdf.
[2] https://www.hud.gov/program_offices/housing/mfh/progdesc/eld202.
[3] https://www.hud.gov/program_offices/housing/mfh/grants/section811ptl.
[4] https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf#page=981.
[5] The Act's requirements also apply to several other Federally Assisted Housing programs administered by other HUD components; those requirements will be addressed separately.

emergency room, and more than 4,000 are hospitalized."[6]

CO is an odorless, colorless, and toxic gas. It is impossible to see, and is a tasteless gas produced by incomplete combustion of fuel burned in vehicles, small engines, stoves, lanterns, grills, fireplaces, gas ranges, or furnaces. It can build-up indoors and poison people and animals who breathe the toxic fumes. The effects of CO exposure can vary from person to person depending on age, overall health, and the concentration and length of exposure. Exposure can cause harmful health conditions, permanent brain damage, life-threatening cardiac complications, fetal death or miscarriage, and death in a matter of minutes. Individuals who are asleep or intoxicated may die from CO poisoning before experiencing any symptoms.[7]

IV. Requirement to Install Detectors and Alarms

The ICC publishes the IFC and periodically updates it. Among other standards, the IFC establishes minimum requirements for CO alarms or detectors in jurisdictions which adopt the IFC into its codes or laws, except for properties where the International Residential Code (IRC) applies. In its administration section, the 2018 IFC notes the model code provisions do not apply to properties covered under the 2018 IRC (Single Family Housing, Duplexes & Townhomes) with some limited exceptions[8].

HUD encourages PHAs and Owners to adopt standards at or above the standards of the 2018 International Fire Code (IFC) as soon as possible for the health and safety of residents. PHAs and Owners are on notice that these requirements will be enforced by HUD after the effective date of December 27, 2022.

V. Preventing CO Intrusion and Funding Resources

This Notice provides HUD's intent to identify building-related sources of CO for PHA and Owner awareness and education for residents or tenants. The material in this and the next section summarizes guidance provided by the U.S. Environmental Protection Agency (EPA), the Centers for Disease Control and Prevention (CDC), the Consumer Product Safety Commission (CPSC), the Federal Emergency Management Agency, and the U.S. Fire Administration. CO alarms or detectors are not a replacement for the proper installation, use, and maintenance of fuel-burning appliances or for well-ventilated garages. PHAs, Owners (e.g., landlords), and managers should ensure that combustion equipment is maintained and properly adjusted. Vehicle use should be carefully managed adjacent to buildings and in vocational programs through signage or policy updates. Where feasible, Owners and managers can provide additional ventilation as a temporary measure when high levels of CO are expected for short periods of time.[9]

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[6] CDC. Carbon Monoxide FAQs https://www.cdc.gov/co/faqs.htm, July 1, 2021.
[7] *Ibid.*
[8] 2018 IFC: 102.5 Application of residential code. Chapter 1 Scope and Administration, 2018 International Fire Code (IFC) | ICC Digital Codes (iccsafe.org)
[9] EPA. Carbon Monoxide's Impact on Indoor Air Quality. https://www.epa.gov/indoor-air-quality-iaq/carbon-monoxides-impact-indoor-air-quality.

Examples of activities to prevent CO intrusion include:

- Ensure gas appliances are properly adjusted.
- Install, properly maintain, and assure through periodic inspection that exhaust fans are functional and vented to outdoors over gas stoves.
- Ensure that flues over fireplaces are operational and capable of opening and closing by residents.
- Use appropriately sized wood stoves certified to meet EPA emission standards with tightly fitting doors.[10]
- Perform annual inspections, clean, and tune-up central heating systems (furnaces, flues, chimneys) and ensure that these activities are conducted by a trained professional.
- Ensure leaks are repaired promptly.
- Provide regular resident CO education through policies or signage.

Sources of CO that can be found in a housing environment, as described in the EPA's webpage *Carbon Monoxide's Impact on Indoor Air Quality*, include:[11]

- Unvented kerosene and gas space heaters.
- Leaking chimneys and furnaces.
- Back-drafting from furnaces, gas water heaters, wood stoves, and fireplaces.
- Gas stoves.
- Generators and other gasoline powered equipment.
- Automobile exhaust from attached garages.
- Auto, truck, or bus exhaust from attached garages, nearby roads, or parking areas.
- Incomplete oxidation during combustion in gas ranges and unvented gas or kerosene heaters.
- Worn or poorly adjusted and maintained combustion devices (e.g., boilers, furnaces) if the flue is improperly sized, blocked, or disconnected; or the flue is leaking.

Rental property owners, managers, and residents all play an important role in preventing CO intrusion and responding quickly when it occurs and where sources of CO exist. Common exposures occur when residents introduce a CO source or result from building related sources, such as an inadequately exhausted vent or a faulty boiler. Other CO exposures occur during a natural disaster or utility interruption. Residents should avoid the use of portable generators, fired grills, vehicles, or fuel-burning space heaters as a heat or fuel-burning electric sources indoors. Therefore, resident education is strongly encouraged particularly during seasonal increases in CO use or during periods of electric or heat outages. PHAs and Owners should inform residents that CO exposure can be prevented. Examples to avoid unintentional CO poisoning include:

- Avoiding portable generators indoors and only using generators outdoors in well-ventilated areas away from all doors, windows, and vents.

[10] EPA. EPA Certified Wood Stoves. https://www.epa.gov/burnwise/epa-certified-wood-stoves.
[11] EPA. Carbon Monoxide's Impact on Indoor Air Quality.

- A gas-burning stove or oven should not be used for heat.
- A fuel-burning space heater that is not vented to the outdoors should not be used.
- A car should not be left running in an enclosed garage.

PHAs operating public housing units may use either Operating Funds or Capital Funds for purchase, installation, and maintenance of CO alarms or detectors. Based on the Act's set-asides, the Capital Fund Program conducts competitions for additional funds for CO alarms or detectors. For the HCV and PBV programs, the property owner or landlord is responsible for the cost of CO alarms or detectors. PHAs may use their HCV administration funds for landlord outreach and education on these requirements. Owners of properties receiving assistance through the PBRA, Section 202, and/or Section 811 program may utilize the property's reserve for replacement account, residual receipts, general operating reserves, owner contributions, or secondary financing to fund the purchase, installation, and maintenance of CO alarms and detectors. These expenditures may be subject to a standard approval process where applicable, but the purchase, installation, and maintenance of CO alarms and detectors are deemed eligible expenses.

VI. Resident Education

In the Act, Congress directed HUD to provide guidance to public housing agencies on how to educate tenants on health hazards in the home, including CO poisoning, lead poisoning, asthma induced by housing-related allergens, and other housing-related preventable outcomes, to help advance primary prevention and prevent future deaths and other harms. This notice provides initial information and guidance for PHAs, Owners, and managers. PIH will develop additional materials for residents to promote healthy housing and prevent CO exposure. Planned materials include a highly graphic flyer using plain language tailored to federally assisted housing Owners and residents. The flyer will be available for black-and-white printing or for color printing.

HUD is developing CO materials for property management to support its educational activities. Materials will be posted to HUD's website. Program notices and supplemental documents will inform Owners and managers of their responsibilities under the Act. Educational materials will be available for download without cost.

VII. Resources for Additional Information

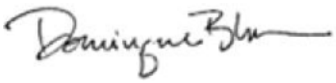
- HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH). https://www.hud.gov/program_offices/healthy_homes/healthyhomes/carbonmonoxide.
- Centers for Disease Control and Prevention (CDC). *Carbon Monoxide Poisoning* information webpage located at https://www.cdc.gov/co/default.htm.
- Consumer Product Safety Commission (CPSC). Carbon Monoxide Fact Sheet. https://www.cpsc.gov/safety-education/safety-guides/carbon-monoxide/carbon-monoxide-fact-sheet.
- CPSC. Carbon Monoxide. https://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Carbon-Monoxide-Information-Center.

- Environmental Protection Agency (EPA). *Protect Your Family and Yourself from Carbon Monoxide Poisoning* at https://www.epa.gov/indoor-air-quality-iaq/protect-your-family-and-yourself-carbon-monoxide-poisoning.
- Federal Emergency Management Agency, US Fire Administration. https://www.usfa.fema.gov/prevention/outreach/carbon_monoxide.html.

Further Information: Questions concerning this notice regarding Public and Indian Housing may be directed to Laura L. Miller-Pittman, Chief, Office of Policy, Program, and Legislative Initiatives, at PIH-OPPLI@hud.gov.

Questions concerning this notice regarding Multifamily Housing programs may be to Daniel Clark at Daniel.J.Clark@hud.gov.

Questions concerning technical issues regarding carbon monoxide alarms or detectors may be directed to the Lead and Healthy Homes help desk, at Lead.Regulations@HUD.gov.



Dominique Blom
General Deputy Assistant Secretary for Public and Indian Housing

Lopa P. Kolluri
Principal Deputy Assistant Secretary for Housing - Federal Housing Commissioner

Matthew Ammon
Director, Office of Lead Hazard Control and Healthy Homes

HUD Frequently Asked Questions (FAQs)

Admission and Occupancy FAQs

II. Treatment of Income (24 CFR 5.609)

C. Mandatory Earned Income Disregard from Annual Income (24 CFR 5.609)

Q1: Under the mandatory earned income exclusion, what is the definition of "previously unemployed"?

A1: The definition of previously unemployed is found in 960.255(a), and is as follows: "includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage." The established minimum wage means the federal minimum wage unless there is a higher state or local minimum wage.

Q2: Does the earned income exclusion apply to minors who turn 18?

A2: Yes, the earned income exclusion applies to anyone who meets the criteria outlined in 24 CFR 960.255. The test that must be applied in this case is whether the person meets one of the three qualifying factors and is there is new or increased earned income after the person turns 18. If yes, EID applies. If no, EID does not apply.

EXAMPLE:

A 17-year old who has been making $1,500 per year while in high school, graduates and turns 18 years old and begins making $10,000 per year. This person will qualify for EID because he meets the qualifying factor of being previously unemployed and has experienced an increase in earned income.

Another example, a 17 year old (not a fulltime student) is making $12,000 per year, and turns 18 years old and is still making $12,000 per year. This person does not qualify for EID because she does not experience an increase in earned income nor does she meet one of the three qualifying factors.

Q3: At reexamination, if some members of a household have increases in their income, and those household members are not entitled to the disregard, how does this affect the rent at the second twelve-month exclusion and phase-in period?

A3: Any increases in income of family members who are not eligible for the earned income disregard will be considered in determining the family's rent.

Q4: At a family's last reexamination effective 1/1/2000, the family is receiving welfare assistance. When the family is reexamined for 1/1/2001, a member of the family has earnings after being previously unemployed for twelve months. This change occurred on 6/15/2000, but the family was not required to report it. Now it is being reported for the reexamination effective 1/1/2001. How is the earned income exclusion benefit processed?

A4: By not reporting the increase, the family has received the benefit for the 6 months prior to the reexamination. The family is entitled to 100 percent of the disregard of any incremental increase for the remaining six months. At the end of the six months, the family is then entitled to the 12 month 50% disregard of the incremental increase.

Q5: What should PHAs use as a guide in determining what constitutes a "qualifying" training or economic self-sufficiency program?

A5: An "economic self-sufficiency" program is defined at 24 CFR 5.603(b) as follows: "Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities."

Q6: Is there a time limit on how long a resident can be unemployed to be eligible for the earned income exclusion?

A6: There is no maximum time limit on how long a resident can be unemployed. However, he/she must have been unemployed for at least the last 12 months, as unemployment is defined in the regulations.

Q7: Can a PHA exclude the income of a former welfare recipient who is now employed with PHDEP or other grant funds?

A7: Yes, provided the resident meets the definition of eligibility for a qualified family at the time the provision became effective.

Q8: An individual who was never previously employed obtains his or her first job, but is still receiving a regular monthly income benefit from welfare. Is this individual entitled to the income disregard?

A8: Yes, the individual is eligible for the earned income disregard based on the following criteria stated in 960.255(a)(iii):

"Whose annual income increases as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for Temporary Assistance to Needy Families **funded under Part A of title IV of the Social Security Act**, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare to Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-provided that the total amount over a six-month period is at least $500**."**

Q9: Does the $500 minimum dollar requirement apply only when a family is seeking to qualify for the disregard on the basis of receipt of one-time TANF benefits or ancillary benefits such as transportation assistance, (and not to the receipt of monthly TANF income maintenance benefits?

A9: Yes, the minimum $500 requirement applies only to one-time benefits, wage subsidies, and transportation. A person receiving regular monthly income maintenance (cash assistance) during or within the six-month period since first receiving assistance is eligible for the disallowance even if the amount received is less than $500.

Q10: An individual is working but also receiving TANF benefits. If the individual's income increases, and as a result, the individual loses the TANF benefits, does the individual qualify for the income disallowance?

A10: Yes, the individual is eligible for the income disregard based on an increase in income as a result of new employment within six months of receiving TANF.

Q11: What happens if a family met the requirements for the previous 18-month income disregard and was processed by the PHA and scheduled to go into effect as of October 1, 1999, but the family was not eligible for the new income disregard at the time? Can this family still take advantage of the 18-month income disregard?

A11: If the family met the requirements at the time the previous 18-month disregard policy was in effect, it should be applied to determine the family's rent for the next 18 months.

EXAMPLE:

A tenant began work in August 1999 after completion of a training program in June that qualified under PIH 98-2 for the old 18-month disregard. (She was not unemployed for the prior 12 months, nor did any member of the family receive benefits under the state TANF program in the prior 6 months.) She reported her earnings at the end of August and the PHA processed the paperwork for a rent increase beginning October 1, 1999. Since the tenant qualified for the 18-month disregard while it was in effect, she is entitled to receive the benefit of it. Her rent should not be increased due to earnings for 18 months. (Note: Beginning work after completion of a training program qualified a resident for the old 18-month disregard, but would not qualify a resident for the new earned income disregard.)

Q12: What rent policy should be applied if a family who completed a qualifying training program prior to October 1, 1999, did not have increased earnings until after October 1, 1999?

A12: The family's eligibility for the new earned income disregard must be based on one of the three criteria outlined in 960.255. Because the resident "completed" training prior to October 1, 1999, the resident would not be eligible for the new earned income disregard related to participation in a training program, as the increased earnings must occur "during" participation in an economic self-sufficiency or other training job. However, the tenant may still be eligible for the earned income disregard based on one of the other two criteria-previously unemployed for at least 12 months or receiving TANF within the last six months.

EXAMPLE:

A tenant completed a qualifying training program in June, but did not start her new job until October. The tenant did not "qualify" for the 18-month disregard prior to October 1, 1999 because her employments began in October. Therefore, the eligibility for an income disregard is determined by whether she qualifies under the new disregard policy effective October 1, 1999. A 4-month lag between the completion of the training program and the start of employment means the tenant is not qualified for the new disregard based on participation in a training program. The tenant's eligibility depends on whether she had received benefits under a state TANF program in the prior 6 months or had been "unemployed" for the prior 12 month.

Q13: What rent policy applies to a family that is in the midst of receiving the old 18-month income disregard when the new disregard policy goes into effect as of October 1, 1999?

A13: The old 18-month income disregard continues to apply to the family.

EXAMPLES:

As of October 1, 1999, a family has been receiving the benefit of the 18-month disregard for 7 months. Instead of applying the new disregard, the PHA should continue to give the family the benefit of the old disregard policy for an additional 11 months.

As of October 1, 1999, the family has been receiving the benefit of the old 18-month disregard for 13 months. Does it matter that the family had been receiving the benefit of the old disregard more than 12 months? No. The family continues to receive the benefit of the 100 percent disregard of any incremental increase in income for the next 5 months.

Q14: Would the income of a person who received TANF due to pregnancy leave or working for the school system be excluded in the same way as a person who is eligible for an income exclusion if she was receiving TANF within the past 6 months of receiving income?

A14: Yes, a person who experiences increases in income from new employment or increased earnings from existing employment during or within six months of receiving TANF benefits, regardless of the reason for the benefits.

Q15: When does the earned income disallowance go into effect?

A15: The initial 12-month cumulative period begins on the date a member of a qualified household is first employed or first experiences an increase in annual income attributable to employment. However, for tracking and administrative purposes, PHAs can begin EID on the first day of the month following the effective date of employment. Additionally, at the onset of the 50% cumulative exclusion period and throughout, it is advisable for PHAs to conduct interim reexaminations to better ensure accuracy in income and rent determination.

Q16: Does the new disregard apply to a tenant who has income from both TANF and employment, beginning prior to October 1, 1999, but then experiences an increase in earnings from work after October 1, 1999?

A16: The new income disregard applies; tenants whose earnings increase while on TANF are eligible for a disregard of their increased income due to earnings.

See 960.255(a)(iii).

EXAMPLE:

A tenant has a 20-hour/week job for which she earns $550 per month (she did not receive the 18-month disregard) and receives $200/month in TANF benefits. Beginning November 1, 1999 the employer increase her hours to 35 per week with a slight pay increase for a total of $1000 per month and she stops receiving the TANF benefits. The new disregard applies to her increase in income due to earnings. Under the regulations, $250/month of the increase in earnings is excluded from her annual income to determine her rent, because that is her increase in income (as opposed to the increase in earnings). The annual income used to determine her rent is 12 times the previous $750/month of income. Her rent would remain what it was in October 1999 (assuming no other changes in income or family composition), because the October and prior rent was based on the previous gross income of $750/month.

Q17: Does a family receive the benefit of the income disregard if the family experiences an increase in earnings within six months of receiving a non-cash TANF benefit, such as a $600 payment to an auto shop for repairs to the tenant's car so she could start a new job?

A17: Yes, receipt of at least $500 in TANF benefits is sufficient to trigger the disregard. To verify which benefits are funded under the state's TANF program, contact your state or local welfare office.

Q18: In determining a family's eligibility for the income disregard, must the member of a household who gets a job or increased earnings be the same member of the household who received TANF benefits?

A18: Yes. Only members of a qualified family who are also TANF recipients can receive the disregard based on the qualifying factor related to new employment or an increase in income during or within six months of receipt of TANF.

Q19: EID is considered to be exclusively part of the income-based rent formula. As such, what happens when a family who has qualified for (and/or received the disallowance) chooses flat rent? Two scenarios are presented below.

Q19a: A family qualified for EID and had experienced several months of the full exclusion. Then, due to an income increase which is not affected by EID they elect to pay flat rent. Until that time the clock was ticking on their 48-month lifetime disallowance period. Now that they are paying flat rent, is the 48-month period suspended or does it continue?

A19a: The 48 month clock continues. As long as the employment continues, the fact that the family opts to pay a flat rent doesn't stop any clock--the 100% exclusion, 50% exclusion, or overall 48 months. The only difference is that the family opted to pay the flat rent over the income-based rent (which was calculated taking the exclusion amounts into account).

Q19b: A family has elected to pay flat rent. They have been paying flat rent for several months when a family member experiences an earned income increase which would qualify the family for EID. Would the 48-month period commence even though while on flat rent they are not experiencing the disallowance of income? Or would it begin only if they were paying income-based rent? Let's say later they choose to pay income-based. Would the 48-month period begin (1) retroactive to when they qualified, (2) at the onset of income-based rent, or (3) would they have to wait for another qualifying increase while on income-based rent to begin the disallowance?

A19b: If a family is paying the flat rent at the time a family member experiences an event that would qualify them for EID, unless the event happens to coincide with their annual reexamination (and annual choice of rent), the family cannot opt for the income-based rent. Therefore, they cannot take advantage of the EID and the 48-month clock does not begin. If the family later chooses to pay income-based rent, they would only qualify for the EID if another qualifying event occurred.

Q20: If a person loses welfare income due to a work-related sanction, is the person eligible for the income disregard if they obtain employment?

A20: The individual receives the benefit of the disregard when they go to work if the person received TANF benefits within the previous 6 months (including such benefits and services as one time payments, wage subsidies and transportation assistance that total at least $500 over a 6 month period). The purpose of the policy of not reducing a tenant's rent, when the tenant experiences a work-related sanction, is to reinforce the welfare agency's incentives for the tenant to obtain employment. If the individual obtains employment, the policy has achieved its intended result.

EXAMPLE:

A family's $500/month TANF benefits were terminated in October 1999 due to failure cooperate with work requirements. Under the new imputed welfare income policy, the PHA kept the family's rent at the prior level of $125/month. While the family was still subject to the welfare sanction, in December 1999, the mother got a part-time job earning $700/month. Since the mother began employment within 6 months of receiving TANF benefits, she is entitled to the disregard of the difference between her earnings and her prior TANF income - or $200/month, in the determination of her annual income for 12 months, and the disregard of $100/month in the subsequent 12 months.

Q21: EID regulations state that the 48-month window of opportunity is a once in lifetime opportunity. If a household qualifies and the PHA opens their window of opportunity and the client moves out before the 48 months ends, do they lose the remainder of their window of opportunity? Or could they resume their unused months if they move to another PHA within the 48-month window of opportunity and again qualify for the EID after they are admitted

A21: Yes. According to the regulations, the tenant is entitled to a lifetime limit of 48 months of the earned income exclusion. In this case, it would be the tenant's responsibility to inform the new PHA that the 48-month EID exclusion clock has been started. The PHA will then verify this information with the PHA where EID was previously processed.

Q22: Is a tenant eligible for the income disregard if she obtains a job 2 months after completion of the coursework portion of a vocational school program while she is receiving job search and counseling assistance from the program?

A22: Yes. Because she is still receiving services from the training program, she has started a job during the program and is entitled to the disregard.

Q23: If a PHA does not perform interim reexaminations and increases rents only at the family's annual reexamination, why does EID begin on the first day of the month following the increase in earnings?

A23: According to the regulation, the exclusion actually begins on the date the family is first employed or first experiences an increase in income attributable to employment. However, for administrative and tracking purposes, the PHA can begin the exclusion on the first of the month following the employment or increase in income. Note: If a person who qualifies for EID begins employment or experiences an increase in income and fails to report this change, the PHA will count this time against the family member's exclusion period.

Q24: Does "training" sufficient to trigger the income disregard includes community college when the tenant is not in a special vocational program?

A24: Yes, as long as it meet the definition of economic self sufficiency 5.603(a): "Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families to provide work for such families. These programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workforce, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities."

Q25: How should a PHA treat income earned in a sheltered workshop-type setting?

A25: A sheltered workshop could qualify as a training or economic self-sufficiency program if it met the definition of an economic self-sufficiency program at 24CFR5.603(b). Income earned in this setting therefore could trigger the mandatory disregard.

Q26: Are PHAs required to provide tenants with notice about the new mandatory income disregard policy?

A26: As part of the information given to tenants under the rent choice requirement, the PHA must explain the income disregard policy to the tenant and provide a written notice of the income-based rent as calculated by the PHA. The determination of the income-based rent must include the proper treatment of income under all applicable disregard policies.

Q27: Can a tenant who is informed he/she has a new job (that would qualify for the disregard) starting in a few weeks choose to pay the rent increase and have the equivalent funds place in an Individual Savings Account (ISA) instead of receiving the disregard?

A27: If the PHA offers a choice between the new optional ISA and the earned income disregard then the tenant has the option to request that the funds that would otherwise be disregarded be placed in the ISA on their behalf. CFR 24 960.255(d) states "As an alternative to the disallowance of increases in income as a result of employment…a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent…"At the option of the family, the PHA must deposit in the ISA the amount that would have been included in tenant rent payable to the PHA as a result of the increased income that is disallowed…"

Q28: If a tenant who qualifies for the earned income disregard based on previous unemployment gets an increase in wages or salary in the 14th month after the disregard began to apply, does her rent increase?

A28: Yes, if the PHA policy calls for interim reporting of increases. The disregard that began when the rent increase from her new employment would have taken effect still applies. However, since it has been more than 12 months since the disregard took effect, the PHA should increase the rent by half the amount of what the new rent increase would have been, based on the change of earnings.

Q29: How many times in a 48-month period can a family qualify for the earned income exclusion?

A29: A family member can only receive a total of 12 months for 100 percent of the incremental increase disregard, and 12 months of the 50 percent disregard in his or her lifetime. The disregard only applies for a maximum of 4 years from the time it is first applied. Refer to 960.255(b)(3).

EXAMPLE:

A tenant who qualified for the mandatory disregard based on previous unemployment works for 20 months and then is laid off. She received 12 months of the full disregard and 8 months of the 50 percent disregard. The resident is called back to work in the 30th month following initial employment. The resident is still entitled to the remaining four months of the 50 percent disregard.

Q30: A tenant received TANF benefits of $500 per month from March 1999-August 1999, and at this point the tenant reached the state's TANF time limit and benefits were terminated. The tenant got a job making $600/month for September through November 1999. At the end of November, the person quit that job and during the week before Christmas started a new job paying $1200/month. Is the tenant eligible for the disregard when she reports her new earnings in January 2000?

A30: Yes. The tenant qualifies for the income disregard because the individual received TANF benefits within the 6-month period prior to January 2000. In addition, in the 12 months prior to beginning her new job, she earned on $1,800, which is less that 500 hours at the federal minimum wage (currently $2,575) so she is considered to be "previously unemployed."

Q31: If a tenant who qualified for the disregard gets a job after paying a minimum rent, does her rent remain at the minimum rent level for another 12 months (and then increase to half of what the rent obligation would have been if all her income were considered?

A31: Yes, For example, if a tenant's only income for 12 months prior to getting a job was from child support, she would meet the eligibility for the disregard as "previously unemployed." If the amount of child support was sufficiently low (and remained unchanged) that the family was subject to the PHA's minimum rent of $50 per month, then her rent would remain at that level for 12 months after her job began. In months 13-24 after her employment began, her rent would be based on half her income (earnings plus her child support income).

Q32: If a tenant is eligible for the earned income disregard, can the disregarded amounts be used in determining the cap for the childcare expense deduction?

A32: In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income; therefore, the disregarded amounts cannot be used in determining the cap for the childcare expense deduction. (See definition of child care expenses at 24 CFR 5.603.)

EXAMPLE:

A resident is receiving the benefit of the new earned income disregard. Her salary is $9,000/year, however, only $3,000 of this amount is being included in annual income. The remaining $6,000 is being disregarded. Childcare expenses for her four-year-old daughter tot $3,640/year. The resident's childcare deduction is capped at $3,000 because this is the amount that is included in annual income.

Q33: Is a public housing tenant who received the first 18 month earned income disregard also entitled to the new earned income disregard?

A33: If a tenant meets the criteria for the new income disregard as outlined in 24 CFR 960.255, a PHA cannot deny a tenant the disregard based on receipt of the earlier 18-month exclusion.

EXAMPLE:

Following is an example of an income disallowance used in the Public Housing Reform Act Training:

- Sandy has been unemployed for 25 months.
- Her monthly TANF income is $540.
- Sandy gets a job at the Chrysler plant, making $1,100 per month on 6/15/2000, and reports her employment immediately.
- Sandy qualifies for a 12-month income disallowance of $560($1,100-$540).
- Sandy's rent continues to be based on $540.
- Sandy is laid off on 9/15/00 and reports her layoff immediately.
- She has 9 months of full disallowance and 12 months of the 50% disallowance left.
- Sandy is called back to work on 1/15/2001, at her $1,100 month salary and she reports immediately.
- Sandy's rent is based on $540 until 10/15/2001 (the end of the 12-month full disallowance.
- Her rent is based on $820 from 10/15/2001 through 10/14/2002 (base rent of $540 plus $280, which is 50% of the $560 disallowance.
- Sandy's rent is based on her full income beginning 10/15/2002.

Following is an example of an income disallowance and imputed welfare income:

- Meet Sandy's neighbor, John Hill.
- Like Sandy, John was receiving TANF income of $540 per month.
- On June 1, 2000, John was sanctioned $140/month for failure to comply with economic self-sufficiency requirements for 3 months.
- John's rent is unchanged. It continues to be based on $540, even though he is only receiving $400 for June through August.
- Sandy told John about her great new job, so he applied to the Chrysler plant.
- John's rent is still based on his pre-sanctioned welfare income of $540.
- Like Sandy, he was laid off on 9/15/2000 and he reported this to the housing authority immediately.
- John is called back 1/15/2001 at his old salary of $1,000 and reports to the housing authority.
- He has 10 months of full disallowance left and 12 months of 50% disallowance.
- His rent will be based on his old welfare income of $540 through 11/15/2001 and based on $770 through 11/15/2002 (base rent of $540 + $230, which is 50% of the $460 disallowance).

Q34: If a family was working, and then becomes unemployed, applies for TANF, receives TANF for one month and then becomes employed again, is the member entitled to the disregard.

A34: Yes. The regulation states that a person is eligible if they have experienced employment **during** or within **6 months after receiving TANF assistance**. This person is eligible for EID.

Q35: A tenant goes to work making $300/month that equals $3,600. This tenant was previously receiving SSI and MFIP that added up to $7,000 per year. Would this tenant be eligible for the Earned Income Exclusion? Why or why not? In other words, does the tenant have to make more money employed than not employed to be eligible for the Earned Income Disallowance

A35: Because the family's annual income increased, the family would qualify for EID as long as the family met one of the three qualifying factors. Here is how you would calculate the exclusion:

The term "Qualifying Event" is used to mean the event that took place that triggered EID (new employment, increase in income during training program, etc.).

Year 1:

Pre Qualifying Event (Baseline Income):
Annual Income of family member = $7000 (SSI)

Post Qualifying Event:
Annual Income of family member = $10,600 ($7000=SSI, $3600=wages)

Amount of Exclusion = $3600 ($10,600 - $7000*)

HUD-50058 Entries:

7b	7d	7e	7f
W	$3600	$3600	$0
S	$7000	$0	$7000

Year 2:

Pre Qualifying Event (Baseline Income):
Annual Income of family member = $7000 (SSI)

Reexamination (following completion of 12 month full exclusion):
Annual Income of family member = $11,000 ($7000=SSI, $4000=wages)

Amount of Exclusion = $2000 ($11,000 - $7000*= $4000 x 50%)

HUD-50058 Entries:

7b	7d	7e	7f
W	$4000	$2000	$2000
S	$7000	$0	$7000

*Baseline income of $7000 is used to calculate the exclusion in both Year 1 and Year 2.

ANNUAL INCOME-WHAT IS INCLUDED

1. Question: What amounts must I consider or include in the determination of a family's annual income?

Answer: When determining a family's annual income, PHAs must consider all amounts, monetary or not, including the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, compensation for personal services, and more, as defined in **24 CFR 5.609**. Annual income is a family's anticipated total or gross income minus allowable exclusions (e.g., TOTAL/GROSS INCOME - EXCLUSIONS = ANNUAL INCOME).

2. Question: If a tenant's Supplemental Security Income (SSI) is reduced to make up for a prior overpayment, what amount should the tenant's annual income include? For example, the tenant should receive $600 per month, but due to the discovery of a prior overpayment of $300, the Social Security Administration (SSA) reduces the tenant's SSI benefits to $540 per month for 5 months. Should the PHA calculate the family's income based on the number of months the family will receive $540 in SSI payments and the number of months the family will receive $600 in SSI payments during the period covered by the reexamination.

Answer: Yes. After obtaining and documenting in the family file third-party verification of annual income and the reason for the payment reduction (**24 CFR 960.259(c)** and **24 CFR 982.516(a)(2)**), the PHA should calculate the family's annual income using the $540 net amount for the five months, and then conduct an interim reexamination when the reduction ends because of the change in the family's income.

As defined in **24 CFR 5.609**, annual income is the anticipated amount to be received from a source outside the family during the 12-month period following admission or annual reexamination. When a tenant's SSI benefits are reduced to make up for a prior overpayment, the recipient's income should include the anticipated amount the SSA will provide, not the amount that would have been provided if no error were made.

As described above, the $300 overpayment has already been included in the calculation of the family's rent, so if the PHA continues to count the $600 instead of the $540, the family will end up paying on that $300 overpayment again. In essence, the family will have had $600 counted as income when it only received $300. This position is consistent with the new **Handbook 4350.3,** ***Occupancy Requirements of Subsidies Multifamily Housing Programs*** (**Chapter 5**, p. 5-6H).

3. Question: If a family's Social Security income is reduced because of an IRS garnishment, should annual income be calculated using the gross income or net income?

Answer: The PHA must use the gross amount to calculate income. Annual income, per **24 CFR 5.609**, includes the full amount of periodic amounts from Social Security.

4. Question: If a tenant receives a pension payment and half of the pension is garnished for an alimony payment, what amount does the PHA count towards annual income?

Answer: The PHA must use the gross amount to calculate annual income. Annual income, per **24 CFR 5.609**, includes the full amount of periodic amounts from pensions.

5. Question: If a tenant received an additional $500 payment for past due amounts owed in child support-the PHA verified the additional amount and the reason for such payment through third-party verification-should the $500 payment be considered in the calculation of the family's annual income?

Answer: Maybe. In this case, the PHA has verified that the additional $500 child support payment was for past due amounts (or a delayed sum) of periodic payments. In accordance with **24 CFR 5.609(b)(7)**, annual income includes periodic and determinable allowances, such as alimony and child support payments. Therefore, by definition, the $500 payment is considered when determining annual income. However, other factors, including the type of reexamination that is being conducted (annual or interim) and the PHA's interim reporting policies also need to be considered. This is necessary because annual income is based on amounts that are "anticipated" to be received from a source outside the family during the 12-month period following admission or the annual reexamination effective date. See scenarios below:

PHAS WITH NO INTERIM REPORTING REQUIREMENTS:

New Admission & Annual Reexamination
The PHA would need to determine the likelihood of the resident receiving another similar payment(s) within the next twelve months before deciding whether or not this amount should be included in the calculation of annual income. To make this determination, the PHA would need more information from the tenant and the third party paying the child support or the agency providing the information. If the PHA determines and can appropriately verify that the tenant in all likelihood will not receive a similar payment the following year, then the amount **should not** be considered when calculating annual income. On the other hand, if the PHA determines that it is likely that the tenant will receive a similar payment and can appropriately verify it, the amount should be included in annual income.

Interim Reexamination
The tenant does not need to report the receipt of an additional child support payment, because the PHA does not require reporting of interim changes in income. In the event the tenant does report the additional payment, the PHA will not increase the tenant's income or rent.

PHAS WITH INTERIM REPORTING REQUIREMENTS:

New Admission & Annual Reexamination
The PHA would need to go through the same process described above to determine "anticipated" annual income. Again, this determination would need to be based on appropriate income verification. However, in this case, the PHA would also have to determine if the family had reported all increases of income between annual reexaminations as required. If they had not, the PHA would take appropriate action (e.g., calculate and charge family retroactive rent, etc.).

Interim Reexamination
If the PHA is completing an interim reexamination for the family, the PHA would include the additional income in the calculation of income and rent.

For additional guidance on the determination of annual income and annual/interim reexamination requirements, see chapters 10, 12, and 13 of the **Public Housing Occupancy Guidebook**, and chapters **5** and **12** of the **Housing Choice Voucher Program Guidebook**.

6. Question: How is unemployment counted? Do PHAs count what the tenant receives monthly and then multiply that amount by 12, or do PHAs just count the whole amount eligible to tenants for the upcoming year?

Answer: The method that a PHA uses to determine annual income is dependent on the way in which the income data is presented and verified. If the unemployment income is presented as an annual amount, then the PHA could use that amount as the annual income. If the verification is for a period other than a full year, the PHA must convert the reported income to an annual figure in accordance with **24 CFR 5.609**. Use the following for calculations:

- Multiply weekly insurance benefits by 52
- Multiply bi-weekly insurance benefits by 26
- Multiply monthly insurance benefits by 12

It is important to note when the benefits are scheduled to expire, since a recertification may be required at that time.

7. Question: Is there a handbook or regulatory citation that requires PHAs to use 52 weeks as the multiplier for the number of weeks worked per year? If a person works part-time, can his or her annual income be determined by multiplying weekly income by 50, rather than 52, because of an assumed two week unpaid vacation?

Answer: As defined in **24 CFR 5.609**, annual income means all amounts, monetary or not, which are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination. Therefore, all 'verified' hourly, weekly, bi-weekly, semi-weekly, or monthly wages, earnings, or benefits must be annualized in order to determine annual income. If an applicant or participant is paid on a weekly basis, then his or her weekly earnings must be multiplied by 52 (weeks in a year) in order to annualize the income. If it can be verified that the individual only works and gets paid for a certain number of weeks per year, that information can and should be considered when annualizing the income. However, a PHA should not be arbitrary in adopting a method for calculating income or assume circumstances that may or may not apply.

8. Question: What if a tenant declares that he or she has no income, but that his or her mother (not in the family) pays all of his or her utility or furniture bill every month, and the PHA verifies with the mother that she pays an average of $80 per month in this manner and anticipates that this will continue for the next 12 months. Is the $80 per month the tenant receives from the mother counted as income for the family?

Answer: Yes. The $80 is counted as income. The definition of annual income includes "all amounts monetary or not" which go to the family, in accordance with **24 CFR 5.609(a)**. In addition, the regulation states that annual income includes "regular contributions or gifts received from organizations or from persons not residing in the dwelling (**24 CFR 5.609(b)(7)**). The mother paying the utility bill would fit under the category of a "regular contribution."

9. Question: What can a PHA do if a zero income family declines some form of assistance for which they are eligible? Can the PHA charge rent based on the amount of income the family is eligible to receive?

Answer: No. PHAs cannot require a family to receive any type of financial assistance; therefore, they cannot base the rent on amounts not received (this situation should not be confused with the inclusion of imputed welfare income in the calculation of rent).

10. Question: What is imputed welfare income?

Answer: As defined in **24 CFR 5.615**, imputed welfare income is the amount of annual income that is not actually received by a family (as a result of a specified welfare benefit reduction), but is included in the family's annual income for purposes of determining rent. A specified welfare benefit reduction is defined as a reduction in the welfare benefit due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program. Before imputed welfare income is included in a family's annual income, a PHA must have proper verification from the TANF agency.

11. Question: According to 24 CFR 5.609 (b)(2), expenditures for business expansion should not be used as deductions in determining net income from a business. What is the definition of expenditures for business expansion?

Answer: The regulation, **24 CFR 5.609(b)(2)**, does not provide a definition of business expansion; therefore, it is up to a PHA to determine what types of activities fall under this category. To ensure consistency, a PHA's policies (**24 CFR 903.7** and **24 CFR 982.54**) should define or provide examples of business expansion activities.

12. Question: If a tenant puts $10,000 in an IRA, and 10 years later the IRA was worth $15,000 and that tenant began withdrawing monthly amounts from the IRA, are the amounts withdrawn considered income?

Answer: The withdrawal of cash or assets from an investment that is received as periodic payments should be counted as income, **unless** the family can document and the PHA verifies that amounts withdrawn are reimbursement of amounts invested. When a family is making a withdrawal from an account in which it has made an investment (e.g. annuity, IRA, etc.), the withdrawals will count as income only after the amount invested has been totally paid out. This interpretation is consistent with the **24 CFR 5.609(b)(3)**.

ANNUAL INCOME-WHAT IS EXCLUDED

13. Question: If a family receives income that by definition is excluded from "annual income" (e.g. food stamps), should the PHA record that amount on the Form HUD-50058?

Answer: Yes. The family should report, and the PHA should record, all amounts of income the family receives on Form HUD-50058. In the case of food stamps, on **Form HUD-50058**, a PHA would list food stamps as income code "G," under column 7b, and then exclude the full amount under column 7e. For a full listing of income exclusions and how they should be recorded, see the "Income and Exclusions Chart" in the **Form HUD-50058 Instruction Booklet**, pages 25-32.

14. Question: What requires a PHA to record amounts excluded from annual income on the Form HUD-50058?

Answer: Although there is currently no regulatory requirement for PHAs to record all income exclusions on the HUD-50058, the Form HUD-50058 instruction booklet instructs PHAs to do so.

15. Question: Where can PHAs go to get answers to questions related to PIC Form-50058?

Answer: For questions related to the form itself, please refer to the **Form HUD-50058 Instruction Booklet**. For answers to questions related to the Form-50058 module, PHAs may call 1-800-366-6827 to talk to a live help specialist. If all lines are busy, callers may leave a voice mail with their name and number and a specialist will call you back within four (4) hours or less. Or, callers may send a message to **PICHelp@hud.gov**.

For training materials on PIC Form-50058, callers may go to PIH's Technical Support and Training Web page at:
http://www.hud.gov/offices/pih/systems/pic/training/index.cfm

16. Question: According to 24 CFR 5.609(c)(11), earnings in excess of $480 for each full-time student 18 years old or older (excluding head of household or spouse) are excluded from the calculation of annual income. Is there an age limit on a full-time student?

Answer: No. Per **24 CFR 5.603**, a full-time student is a person who is attending school or vocational training on a full-time basis, as defined by the educational/vocational institution the family member is attending. The definition does not specify a maximum age.

17. Question: What is considered temporary or sporadic income?

Answer: The regulation, **24 CFR 5.609(c)(9)**, does not define temporary or sporadic income. Therefore, PHAs must determine what is considered temporary or sporadic income, and define it in their policies. Generally, amounts that are neither reliable nor periodic are considered sporadic, and should be excluded from annual income.

ANNUAL INCOME-EARNED INCOME DISALLOWANCE (EID)

18. Question : Would a tenant residing in public housing or a Section 8 HCV assisted unit be eligible for the earned income disallowance (EID), as authorized under the 1998 Quality Housing and Work Responsibility Act (QHWRA) if he or she received the full 18-month self sufficiency/training disregard of income prior to current law?

Answer: Yes. A tenant residing in public housing or a Section 8 HCV assisted unit would be eligible for EID under the current law, **Title V, Section 508 of the 1998 QHWRA** (effective October 1, 1999), even if he or she received the full 18-month self sufficiency/training disregard of income under the prior rule. The tenant, however, must meet one of the three qualifying eligibility factors outlined in **24 CFR 960.255** for public housing and **24 CFR 5.617** for the HCV program.

19. Question: Are the eligibility requirements for EID the same for the HCV and the public housing program?

Answer: No. They're similar, but not the same.

For the public housing program, EID applies to a family member residing in public housing whose annual income increases as a result of employment or increased earnings. [See **24 CFR 960.255** for the full definition of "qualified family" in public housing and a full discussion of all of the criteria the family member must meet in order to be eligible for EID].

For the Section 8 HCV program, EID applies to a family receiving tenant-based assistance whose annual income increases as a result of employment or increased earnings of a family member *who is a person with disabilities*. [See **24 CFR 5.617** for the full definition of "qualified family" in the Section 8 HCV program and a full discussion of all of the criteria the *disabled* family member must meet in order to be eligible for EID]. Note the key distinction. To qualify for EID in public housing, **any** family member may become employed or experience increased earnings. To qualify for EID in the Section 8 HCV program, only a **disabled** family member may become employed or experience increased earnings.

It is important that PHAs are well versed on **both** the public housing requirements in **24 CFR 960.255** as well as the less common Section 8 HCV requirements in **24 CFR 5.617**, both of which fully outline the qualification and disallowance provisions for the respective programs.

20. Question : Does the family member whose annual income increases as a result of new employment or increased earnings during or within six months after receiving TANF have to be that same family member who receives or received TANF to qualify for EID?

Answer: Yes. Implicit in **24 CFR 960.255** and **24 CFR 5.617**, the family member whose annual income increases as a result of new employment or increased earnings during or within six months after receiving TANF has to be that same family member who receives or received TANF to qualify for EID.

21. Question: Does HUD consider a person/family a new admission into public housing for the first 12 months following admission, and consider a Section 8 HCV program participant a new admission for the first 12 months of residing in assisted housing? Does the length of time a family has been residing in public and assisted housing affect their eligibility for EID? What if new applicants were unemployed for at least 12 months prior to or during their admission to public housing or residency in Section 8 assisted housing?

Answer: For purposes of EID, the regulations define a qualified family as a family residing in public housing (**24 CFR 960.255**) or a disabled person residing in Section 8 HCV assisted housing (**24 CFR 5.617**) that meets one of the three qualifying factors. Therefore, individuals are not eligible for EID at the time of admission. To be eligible for EID, the qualifying event must occur after admission, or in other words, while the individual is residing in public or assisted housing. The length of time the individual has been residing in public or assisted housing (two weeks, two months, two years, etc.) is irrelevant.

22. Question : The regulations (24 CFR 960.255 and 24 CFR 5.617) state that the 48-month maximum period of the EID is over the course of a lifetime. If a person qualifies for EID and the PHA begins the initial 12-month exclusion and the person moves out of public housing or an HCV assisted unit before the 48-month period ends, does the person lose or forfeit the remainder of his or her 48-month income exclusion?

Answer: No. A person in these circumstances does not automatically lose or forfeit the remaining months of their exclusion. For example, if a person moves out of public housing during the cumulative 24-month exclusion period, and then moves back into a public housing unit, under the same or another PHA's jurisdiction, within the 48-month maximum period, the person continues to qualify for EID. Under these circumstances, a PHA would be required to resume the exclusion until the two cumulative 12-month exclusion periods, or the 48-month maximum period expire (whichever comes first). It is important to note that in order for the PHA to be aware of such circumstances, they would have to be reported by the tenant. The PHA would then have to verify the information. Although this example relates to a public housing tenant, the same would be true for an HCV participant who left and then returned to the HCV program.

23. Question: In a mixed family, is the member of the family who does not have eligible immigration status eligible for EID?

Answer: Although it is not specifically addressed in the EID rule, non-citizens are not eligible for EID. As specified in **24 CFR 5.500(a)**, Section 214 of the Housing and Community Development Act of 1980 prohibits HUD from making financial assistance available to non-citizens who do not have eligible immigration status. Allowing a family member who does not have eligible immigration status to benefit from EID would result in that individual receiving "financial assistance."

24. Question: Does a family living in public housing qualify for EID in the following situation: A 17 year old member of the family (not a full-time student) earning $12,000 per year, turns 18 years old and continues to earn $12,000 per year? Does the increase in the family's annual income due to the 17-year-old turning 18 qualify the family for EID?

Answer: No. A qualified family, as defined in **24 CFR 960.255**, is a family residing in public housing, whose annual income increases due to one of the following reasons:

- Employment of a family member who was previously unemployed for one or more years prior to employment.
- Increased earnings by a family member during participation in any economic self-sufficiency or other training program.
- New employment or increased earnings of a family member during or within 6 months after receiving assistance, benefits, or services under any state program for temporary assistance (TANF, Welfare-to-Work).

In this case, the family experienced an increase in annual income due to the minor turning 18, and not

for any of the reasons stated above. Therefore, the family does not qualify for EID.

25. Question: Does a 17-year-old family member who has been making $1500 per year while in high school, qualify for EID if, after graduation and turning 18, he begins making $10,000?

Answer: Yes. In this case the individual would meet the requirement under **24 CFR 960.255**, of someone who was previously unemployed for one or more years prior to employment. Remember, "previously unemployed" includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

26. Question: Has HUD developed a form for PHAs to use to determine if someone qualifies for the Earned Income Disallowance (EID)?

Answer: HUD does provide an EID worksheet as a companion piece to the EID calculator. Both the **EID calculator and worksheet** (MS-Excel) can be accessed at the **Earned Income Disallowance (EID) Worksheet and Calculator Web Page**.

27. Question: Has HUD developed a form to help PHAs calculate the amount excluded under EID and track the time someone qualifies for the exclusion?

Answer: While there is no tracking form available, an Excel-based calculator that can be used to collect information on EID family members is currently available. Also available are EID in-depth examples and training materials from the **January and February Rental Integrity Summit trainings**, held in Orlando, FL and Anaheim, CA. The **EID calculator and worksheet** (MS-Excel) can be accessed at the **Earned Income Disallowance (EID) Worksheet and Calculator Web Page**.

28. Question: Is HUD going to use the HUD-50058 to track EID?

Answer: Potentially. HUD will consider this suggestion for future edits to the form.

ASSETS AND INCOME FROM ASSETS

29. Question: According to 24 CFR 5.609, "Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access." How does HUD define assets and how are family assets treated in determining a family's annual income?

Answer: In general terms, an asset is cash or non-cash items that can be converted to cash, including real property, savings, stocks, bonds, and other forms of capital investment. Note that when assets are included in the calculation of annual income, as defined in **24 CFR 5.609**, it is the income earned from the asset, not the value of the asset that is counted.

If the value of net family assets is $5000 or less, the actual income from assets is included in the calculation of annual income.

If the value of net family assets is greater than $5,000, annual income includes the greater of:

- Actual income from the assets
- A percentage of the value of net family assets based on the passbook savings rate, as determined by HUD

Example: The Smith family has $6,000 (average balance over six months) in a non-interest-bearing checking account. The PHA would include in the annual income an amount based on the current HUD passbook savings rate. Assuming the current Passbook savings rate is 2 percent, the calculation would be: $6,000 x .02 = $120.

30. Question: Who establishes the passbook savings rate and how is it determined?

Answer: Currently, each Field Office establishes the passbook savings rate to be used by PHAs within its jurisdiction. A Field Office determines the rate based on the average interest rate received on passbook savings accounts at several banks in the local area (**24 CFR 5.609** and **Form HUD-50058 Instruction Booklet**, p. 22.)

Although the new **Public Housing Occupancy Guidebook**, page 122, footnote 35, states that "Consistent with the Multi-family Housing Program, PHAs will use a standard 2% passbook rate," the current method described above will remain in effect until superceded by PIH Notice.

31. Question: Are one-time, lump sum payments (inheritance, lottery winnings, etc.) automatically counted as assets?

Answer: No. Where the family receives some type of payment as "cash" and then retains this "cash" in some verifiable form-deposited in a checking or savings account, invested in stock or mutual fund, or used to purchase bonds or real estate as an investment-then the "cash" becomes clearly identifiable and recognizable as an "asset." This is consistent with the concept of "Net Family Assets" as outlined in **24 CFR 5.603(b)**.

On the other hand, if the family receives some type of cash payment and does *not* retain the cash in one of

these forms, it is nearly impossible to see how a PHA would determine that an asset actually exists. Simply knowing, or even verifying, that the family received a lump sum cash payment of a certain amount does not automatically classify that amount as an "asset." Families receiving lump sum cash payments may use this cash to pay bills, buy items of personal property, or for other purposes that have nothing to do with holding on to the cash as an asset. Where these payments are not retained in some verifiable form, the PHA would have no basis for projecting that the cash will, in fact, be identifiable as an asset for the 12-month period following admission/reexamination effective date.

32. Question: If a family member has lottery winnings of $75,000 and gives it away, is this considered disposing of an asset for less than fair market value?

Answer: Not necessarily. See the discussion above re: one-time, lump-sum payments as assets. If the lump sum amount is never classified as an asset, then it logically cannot be classified as an asset disposed of for less than fair market value.

On the other hand, a lump sum amount (such as one-time $75,000 lottery winnings) that is retained as an asset and is identifiable as an asset, can potentially qualify as an asset disposed of for less than fair market value. If the family indicates that the asset was given away with no compensation of equal value, as the question suggests, then the asset would seem to fit the definition of an asset disposed of for less than fair market value. Of course, if the family indicates that the "asset" was liquidated to pay bills, buy items of personal property, or for other purposes where fair compensation was received, the asset could not be said to have been disposed of for less than fair market value. Ultimately, as with many other aspects of income and rent, PHA policy may be necessary to identify the type of verification and documentation the PHA will need to establish that fair value was received for a verified, identifiable asset that no longer exists.

33. Question: If a tenant puts $10,000 in an IRA, and 10 years later the IRA was worth $15,000 and that tenant began withdrawing monthly amounts from the IRA, are the amounts withdrawn considered income?

Answer: The withdrawal of cash or assets from an investment that is received as periodic payments should be counted as income, **unless** the family can document and the PHA verifies that amounts withdrawn are reimbursement of amounts invested. When a family is making a withdrawal from an account in which it has made an investment (e.g. annuity, IRA, etc.), the withdrawals will count as income only after the amount invested has been totally paid out. This interpretation is consistent with the **24 CFR 5.609(b)(3)**.

34. Question: A number of financial institutions charge tenants a user's fee (e.g., debit the tenant's account) to pay for third-party verification requested by the PHA. Can a PHA pass on the cost for third-party verification to an applicant or tenant?

Answer: No. The PHA cannot pass on the cost of bank user fees to an applicant or tenant for payment of third party verification requests made by the PHA. (See the **Notice PIH 2004-01,** ***Verification Guidance*** for more information.)

ADJUSTED INCOME

35. Question: What is adjusted income and how does it differ from a family's annual income?

Answer: Adjusted income, as defined in **24 CFR 5.611**, means a family's annual income *minus* a number of mandatory deductions.

ANNUAL INCOME - DEDUCTIONS = ADJUSTED INCOME

The mandatory deductions include amounts for:

- Dependents
- Status as an elderly or disabled family
- Unreimbursed childcare expenses
- Unreimbursed medical expenses (elderly/disabled family only)
- Unreimbursed disability assistance expenses

36. Question: When calculating adjusted income, are the deductions the same for both the public housing and the Section 8 HCV programs?

Answer: Almost.

Both the public housing and the Section 8 HCV programs have the same mandatory deductions, as defined in **24 CFR 5.611** and listed under **Question 37**.

However, for the public housing program, PHAs may adopt *additional* deductions from annual income. These additional deductions (also known as "permissible" or "permissive" deductions) are discretionary on the part of a PHA. Any PHA adopting permissive deductions must do so by establishing written policy for these deductions.

Because they are "permissive," at the discretion of the PHA, the deductions may vary from PHA to PHA. The vast majority of PHAs have not elected to adopt permissive deductions for the public housing program, and use only the required mandatory deductions.

37. Question: If parents have joint custody of a child-child lives with one parent for half the year and lives with the other parent the other half of the year-and both live in public housing units, how should PHAs handle the $480 dependent deduction? Can PHAs give each parent a $240 deduction or should they give each parent the $480 deduction?

Answer: The regulation, **24 CFR 5.611(a)(1)**, does not address this issue specifically. HUD recommends that when parents share custody of a child and both live in assisted housing, only one parent at a time claims the dependent deduction for that child. A PHA could rely on tax returns to determine which parent claimed the child for income tax purposes. This position is consistent with the **4350.3 Occupancy Requirements of Subsidized Multifamily Housing Programs Handbook, chapter 5**, 5-10A(4).

ADJUSTED INCOME-MEDICAL EXPENSES

38. Question : Regarding medical expense deductions and the $400 disabled or elderly family deduction, the HUD Form-50058 instructions refer to the head, co-head, and spouse. The regulations refer only to the head and spouse for these mandatory deductions. Can a disabled or elderly co-head qualify a family for the $400 elderly or disabled family deduction and medical expense deductions?

Answer: Yes. As defined in **24 CFR 5.403**, a disabled family may include two or more persons with disabilities living together and an elderly family may include two or more persons who are at least 62 years of age living together. An example of this would be an unmarried couple or two persons living together and listed as head and co-head on the lease agreement. Therefore, a disabled or elderly co-head may qualify a family for the $400 elderly or disabled family deduction and medical expense deductions in accordance with **24 CFR 5.611**. The **Form HUD-50058 instructions** should be followed in this case, which is consistent with **Handbook 4350.3,** ***Occupancy Requirements of Subsidized Multifamily Housing Programs*** (**Chapter 5**, p. 5-9B2). See also FAQs under "***Annual Income-What Is Excluded***" of this page for questions related to income exclusions and **Form HUD-50058**.

39. Question: Are the medical expenses of an elderly/disabled family's grandchild (assuming the grandchild is a member of the assisted family) included in the calculation of the medical deduction?

Answer: Yes. If the family meets the definition of elderly or disabled under **24 CFR 5.403**, all family members are entitled to having their unreimbursed medical expenses included in the calculation of the medical expense deduction, per **24 CFR 5.611**.

40. Question: Should a PHA count as a medical expense a medical bill that the family is not paying anything on?

Answer: No. Per **24 CFR 5.603**, medical expenses are anticipated expenses, including medical insurance premiums, during the period for which annual income is computed that are not covered by insurance, or some other source. If the family is not paying anything towards its medical bill, it should not receive the deduction. Keep in mind the medical expense deduction is for *unreimbursed* medical expenses of any elderly family or disabled family, per **24 CFR 5.611**.

41. Question: If a family takes out a loan to pay medical expenses, can the PHA use the payment on the loan as a medical expense deduction?

Answer: The source of income that a family will use to pay a medical expense, such as a loan, does not impact the eligibility of the expense itself. Just like any other medical expense, a PHA would be required to determine whether or not the family qualifies as an elderly or disabled family (see **24 CFR 5.403**) and has eligible medical expenses, per **24 CFR 5.611**, and then calculate and verify those expenses based on the PHA's adopted policies.

42. Question: What happens if a PHA calculated a medical expense deduction based on projected medical expenses, but the family then does not incur the medical expenses? Can the PHA calculate an underpayment by the family? What recourse does the PHA have to rectify this situation?

Answer: All components of annual and adjusted income, including medical expenses are, by definition, based on what is anticipated for the 12-month period following admission or annual reexamination, per **24 CFR 5.603**. Therefore, it is not only possible, but likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on appropriate verification. The only

time this situation could be considered an underpayment by the family is if a PHA's interim reporting policy explicitly required families to report changes in medical expenses. It is unlikely that a PHA would have this type of a policy.

ADJUSTED INCOME-CHILDCARE EXPENSES

43. Question : May a PHA disallow a deduction for childcare expense because there is an unemployed adult family member available to provide childcare?

Answer: A PHA may not disallow a deduction for childcare expense because there is an unemployed adult family member that may be available to provide childcare. A PHA may not decide who will provide childcare for a participant's child(ren), nor may the PHA decide the type of childcare available for a participant's child(ren).

44. Question: How does a PHA determine reasonable costs for childcare expenses?

Answer: A PHA should have adopted polices on how they will determine reasonable childcare expenses, which should include some type of market survey to determine the rates for childcare, for comparable situations, within the local market.

45. Question: Since the earned income disallowance (EID) reduces the amount of annual income, how does this affect the amount of childcare expenses a family qualifies for?

Answer: If the childcare is necessary to permit employment, per **24 CFR 5.603**, the amount of the childcare deduction cannot exceed the amount of employment income included in annual income. For example, if a family member earns $15,000 a year but because they qualify for EID, only $5,000 is included in the calculation of annual income, the amount of childcare expenses that can be deducted from annual income is limited to $5,000.

MINIMUM RENT

46. Question: Under what circumstances are PHAs required to suspend the minimum rent requirement for families who are paying minimum rent?

Answer: As defined in **24 CFR 5.630**, the responsible entity (i.e. PHA) must grant a family an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes the following situations:

- When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program
- When the family would be evicted because it is unable to pay the minimum rent
- When the income of the family has decreased because of changed circumstances, including loss of employment
- When a death has occurred in the family
- Other circumstances determined by the PHA or HUD

47. Question: Do PHAs have to suspend the family's minimum rent requirement the day the family makes the request?

Answer: In accordance with **24 CFR 5.630**, if a family requests a financial hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption. The suspension must continue until the responsible entity determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long-term.

FLAT RENT

48. Question: What is the difference between income-based rent and flat rent in public housing?

Answer: Income-based and flat rents are both defined in **24 CFR 960.253**. An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rent. A PHA's rent policies may specify that the PHA will use a percentage of family income or some other reasonable system. In no case, may the income-based rent exceed the total tenant payment (TTP) for the family minus any applicable utility allowance for tenant-paid utilities.

Unlike income-based rents, flat rents do not fluctuate with changes in family income. Flat rents are based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the unit. The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

49. Question: Do PHAs have to give public housing families the option to pay income-based rent or flat rent?

Answer: Yes. As defined in **24 CFR 960.253**, once a year the PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. Except for financial hardship cases, the family may not be offered this choice more than once a year.

50. Question: What are the timeframes for PHAs to convert from ceiling rents to flat rents? Can PHAs retain ceiling rents?

Answer: Per **24 CFR 960.253(d)**, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three-year period, a PHA must adjust such ceiling rents to the level required for flat rents under this section. It is important to note that PHAs may continue to impose a ceiling on tenant rents as an income-based rent option, but again, these rents must be at the level of flat rents.

51. Question: What method is required for PHAs to determine flat rents?

Answer: HUD does not require a PHA to use a particular method. However, **24 CFR 960.253(b)** requires that a PHA consider, at a minimum, the following items: location, quality, size, unit type, age of the unit, amenities, housing services, maintenance, and utilities provided by the PHA.

REEXAMINATION PROCESS

52. Question: What are the requirements for interim reexaminations?

Answer: In accordance with **24 CFR 960.257** and **24 CFR 982.516**, PHAs must adopt policies describing when interim reexaminations will be conducted and prescribing when and under what conditions the family must report a change in family income or composition. For example, a PHA's policy could:

- Require families to report all increases in income
- Require families to report only increases in excess of a certain dollar amount
- Allow families who experience an increase in income to wait to report it until their next annual reexamination.

It is important to remember that under the regulations, a family may request an interim reexamination of family income or composition because of changes since the last determination, and the PHA must make the interim changes within a reasonable time after the family's request.

53. Question: How often are PHAs required to conduct reexaminations for public housing and Section 8 HCV program participants?

Answer: In accordance with **24 CFR 960.257**, for public housing families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information.

For public housing families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years. A family may request an interim reexamination of family

For families receiving Section 8 HCV subsidies, in accordance with **24 CFR 982.516**, the PHA must conduct a reexamination of family income and composition at least annually.

FAIR MARKET RENTS (FMRs) AND PAYMENT STANDARDS

54. Question: What are Fair Market Rents (FMRs) and how are they used to set payment standards in the housing choice voucher (HCV) program?

Answer: FMRs are gross rent estimates. They include the shelter rent plus the cost of all utilities, except telephone and cable. The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size (**24 CFR 982.503(b)**). PHAs may set them higher or lower with HUD approval.

For more information on FMRs and payment standard schedules, see **24 CFR 982.503**.

55. Question: If the payment standard increases or decreases during the housing assistance payment (HAP) contract, are PHAs required to adjust the family's rent at that time, using the higher or lower payment standard?

Answer: As defined in **24 CFR 982.505**, if the payment standard amount increases during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly HAP for the family beginning at the effective date of the family's first annual reexamination on or after the effective date of the increase in the payment standard amount.

If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second annual reexamination, following the effective date of the decrease in the payment standard amount. The PHA shall advise the family that the application of the lower payment standard amount will be deferred until the second annual reexamination, following the effective date of the decrease in the payment standard amount.

56. Question: How often does a PHA have to update its payment standards?

Answer: A PHA must update its payment standards in accordance with its written policies. Per **24 CFR 982.54(d)(14)**, a PHA must have a policy for establishing and revising voucher payment standards. That said, in accordance with **24 CFR 982.503(b)**, the payment standards must always be within 90 to 110 percent of the currently published FMR.

57. Question: How long are area exception payment standards in effect? What happens to the exception payment standards when new FMRs are issued?

HUD's Answer: An area exception payment standard remains in effect until it is exceeded by the basic range for setting payment standards - 110 percent of the current FMR. At that point, the exception payment standard is no longer needed.

UTILITY ALLOWANCES

58. Question: When does a family receive the utility allowance for the range and refrigerator?

Answer: A family is only given this allowance if the lease indicates that it is the tenant's responsibility to provide the range and/or refrigerator, in accordance with **24 CFR 982.517(a)**. The allowance is intended to cover the family's cost in supplying the appliances, not the energy used to operate them.

59. Question: If an owner provides a range and refrigerator but the family wants to use their own, do they get the utility allowance for these appliances?

Answer: No. The allowance is only given if the owner does not provide the appliances. The lease should be used to determine what the owner provides.

NON-CITIZEN ISSUES

60. Question: Can a family be defined as a mixed family if the only family member with citizenship is a minor child?

Answer: Yes. The regulation, **24 CFR 5.504**, requires only that one member of the family is eligible. HUD's Office of General Counsel has issued an opinion clarifying the issue as follows: The head of household or spouse does not have to be a citizen or eligible immigrant in order for a family to receive housing assistance. At least one member of a family must be eligible, which could be a child. Housing assistance must be prorated so only eligible family members are subsidized. Family members who do not have eligible immigration status can be the head of household for purposes of income eligibility, determination of rent, and entering into a lease, even though their occupancy is not being subsidized.

61. Question: If a person is a "non-contending" family member, does the PHA consider them to have eligible or ineligible immigration status?

Answer: The PHA should consider the person to have ineligible immigration status. Per **24 CFR 5.508(a)**, a person's eligibility status is contingent upon that person submitting a written declaration to the responsible entity, by which that person declares whether he or she is a U.S. citizen or a non-citizen with eligible status. By not submitting the signed declaration, effectively not contending citizenship or eligible immigration status, the person cannot establish eligibility for assistance or continued assistance under Section 214-covered programs.

62. Question: If the only family member who has eligible citizenship or immigration status passes away or vacates the unit, what does the PHA have to do with the remaining ineligible members?

Answer: If there are no remaining family members with eligible immigration status residing in the unit, the family is no longer eligible to receive assistance and must be terminated from the program. (See also **24 CFR 5.518** for types of assistance available for mixed and other families.)

63. Question: Does the Section 214 Form (declaration of citizenship) have to be signed annually or only once?

Answer: The citizenship status of each member of an applicant or tenant family needs to only be declared once. Per **24 CFR 5.508(g)(5)**, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

64. Question: What should a PHA do if its hardware or software is not compatible with the new automated verification INS SAVE system?

Answer: PHAs that are unable to access the INS SAVE system to verify a person's immigration status will be required to manually verify citizenship by submitting **Form G-845S**, as described in **24 CFR 5.512(d)**. The instructions for this process are contained in the INS SAVE Program Users Manual. To order a copy, contact your local INS Office.

65. Question: Should a PHA evict a family that provided false citizenship documentation, or just recalculate the rent as a mixed family?

Answer: As long as the family has at least one eligible member, it is up to the PHA to determine whether or not to terminate a family under these circumstances. A PHA certainly has the right to terminate assistance when a family knowingly provides false documentation, in accordance with **24 CFR 966.4(l)(2)(ii)(C)** and **24 CFR 982.552(c)**. At a minimum, the PHA would have to charge the family retroactive rent for the time period that the PHA provided full assistance to the family.

GENERAL QUESTIONS

66. Question: How often does HUD expect the PHA to re-determine the public housing maximum rent for purposes of prorating rent for a mixed family?

Answer: Although the regulation (**24 CFR 5.520**) does not specifically address this issue, HUD recommends that the PHA re-determine the public housing maximum rent at least annually for purposes of prorating rent for a mixed family. It is reasonable to expect the PHA to re-determine the maximum rent on an annual basis since it is based on the value of the 95th percentile of the total tenant payment (TTP) for each tenant within the PHA, which changes on an on-going basis because of move-ins, move-outs, changes in tenant income, etc.

67. Question: When an owner runs a promotion, offering one free month of rent to attract new tenants, what does a PHA do when a Section 8 HCV participant moves into one of these units and receives one free month of rent? The PHA is making a HAP payment to the owner, but the tenant does not have to pay anything to the owner for that month, which causes an overpayment in the HAP.

Answer: The easiest way for a PHA to handle this situation is to have the owner prorate the one free month of rent over a 12-month period. This would lower the monthly contract rent, causing no overpayment. For example, if the one free month of rent amounts to $600, the owner would recalculate the monthly contract rent for a 12-month period, factoring in the $600 in free rent. Thus, the monthly contract rent would become $550 rather than $600.

68. Question: What is the difference between statutory and regulatory waivers?

Answer: HUD cannot waive statutory requirements or regulatory requirements that are based on statutory requirements, with one exception-the **Moving to Work Demonstration Program (MTW)**. Under MTW, HUD has the legislative authority to waive provisions of the U.S. Housing Act of 1937 for participating PHAs.

Regulatory waivers of program requirements that are not explicitly stated in a statute, may only be granted by the Assistant Secretary for Public and Indian Housing (PIH) (or his designee), on a case-by-case basis, for good cause.

Rental Integrity Summit FAQs

GENERAL INCOME AND RENT DETERMINATION FAQS

Annual Income—What Is Included

1. Question: Exemplified in the Calculation Problem Areas (Section 2, pgs. 7-23) PowerPoint presentation slides from the training, does the family have the right to choose between the two acceptable methods for calculating seasonal employment income, or can the PHA adopt in its policies one over the other method?

Answer: The PHA should lay out both scenarios to the tenant, project income under both methods, and let the family decide which method to select. Tenants with seasonal employment should be informed of the PHA's policy regarding the two acceptable methods:

Method 1: The PHA annualizes current income (e.g., $2,000 per month x 12 months), and when seasonal employment ends, it conducts an interim reexamination.

Method 2: The PHA calculates anticipated income from all known sources for the entire year (e.g., $2,000 per month x 8 months, $400 per month x 4 months) and conducts no interim reexamination.

If the family selects **Method 1**, the family should know that an interim reexamination will be conducted; and if the family selects **Method 2**, the family should know that an interim reexamination will not be conducted.

2. Question: Regarding child support payments, when the child turns 18 and is still receiving payments for arrears, would the PHA count this as annual income?

Answer: Yes. Pursuant to **24 CFR 5.609**, annual income means all amounts, monetary or not, which goes to, or on the behalf of, the family head or to any other family member, that are anticipated to be received from a source outside the family during the 12-month period following admission or the annual reexamination effective date.

3. Question: If a family receives different amounts each month (e.g., $500 - $700) in child support payments, and, for one month, receives a lump-sum payment of $10,000 for arrears, must the PHA project annual income including the $10,000?

HUD's Answer: For the year in question, the $10,000 is income received for child support and should be counted as usual.

Answer: See Question# 5, under Annual Income-What Is Included, on the **General Income and Rent Determination Web Page**, for the answer to this question.

4. Question: When a State is paying the Medicare premium, what amount is used to calculate income, gross or net benefits? Should a PHA add Medicare premium to gross before calculating?

Answer: In the calculation of annual income (**24 CFR 5.609**), the full amount or gross amount, including Medicare premiums should be used.

Annual Income-What Is Excluded

5. Question: What is the difference between delayed and deferred Social Security (SS) and/or Supplemental Security Income (SSI) payments? The regulation (24 CFR 5.609) uses both terms.

Answer: Under **24 CFR 5.609(b)(4)**, *what is included in annual income*, the term "delayed" means periodic benefit payment amounts, for which a public housing or HCV applicant or tenant **is eligible**, that are not received timely. These are scheduled benefit amounts that are due to the applicant or tenant, but are simply late.

Under **24 CFR 5.609(c)(14)**, *what is excluded from annual income*, the term "deferred" means *postponed* by SSA to a later date. For example, the applicant or tenant receives a $32,000 deferred SS benefit payment, following a lengthy **eligibility dispute**.

Annual Income-Earned Income Disallowance (EID)

6. Question: Can a PHA receive a waiver from HUD from the lifetime 48-month exclusionary period for a disabled family member who requests an exemption, claiming disability-related reasons? Would this be considered a "reasonable accommodation" for disabled persons?

Answer: Although **Title V, Sec. 508(b) of the 1998 QHWRA** does not impose a time limit on the availability of the income disregard, the **Changes to Admissions and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs Federal Register** (March 29, 2000) limits the EID exclusion to a lifetime period of 48 months. This is a regulatory requirement that applies to ***all*** families and persons applying for or residing in public housing or applying for or receiving Section 8 assistance. HUD is not in favor of waiving this requirement, as the intent of the exclusion is to promote self-sufficiency.

7. Question: What about income disallowances for "Welfare-to-Work" programs? Is it still in effect for qualified families?

Answer: Yes. Pursuant to **24 CFR 5.617(b)(3)** for HCV and **24 CFR 960.255(a)(iii)** for public housing, a family member, whose annual income increases, during or within six months after receiving benefits, services, or assistance under a State administered temporary assistance for needy families (TANF) or Welfare-to-Work (WTW) program, as determined by the PHA in consultation with the local TANF agency, is qualified for the income disallowance.

8. Question: Has HUD developed a form to help PHAs calculate the amount excluded under the EID and track the time someone qualifies for the exclusion?

Answer: While there is no tracking form available, an Excel-based calculator that can be used to collect information on EID family members is currently available. The **EID calculator and worksheet** (MS-Excel) can be accessed at the **Earned Income Disallowance (EID) Worksheet and Calculator Web Page**. Also available are EID in-depth examples and training materials from the **January and February Rental Integrity Summit trainings**, held in Orlando, FL and Anaheim, CA.

9. Question: If a PHA's policy states it does not do interim reexaminations, and adjustments to rent only occur at the family's annual reexamination, why must a PHA process the EID for family's, beginning on the first of the following month after the increase in earnings?

Answer: Pursuant to the regulation, **24 CFR 960.255** and **24 CFR 5.617**, the exclusion begins on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment. As this is both a regulatory and statutory requirement, the PHA must perform an interim reexamination, processing the EID for the qualified family member accordingly.

10. Question: A non-disabled, public housing resident receiving an EID is relocated under Hope VI with a voucher. If after receiving for four years the voucher under Hope VI, the resident returns to public housing, can the resident resume his or her remaining months of EID or does the resident loose his or her remaining months?

Answer: The resident will loose his or her remaining months. The EID is limited to one 48-month period from the beginning of the first month after commencement of the qualifying employment of a family member. If the period of increased income does not last for 12 consecutive months, the disallowance period may be resumed at any time *within* the 48-month period. Since this resident did not return to public housing before the end of the 48-month period, the resident is no longer eligible for EID.

11. Question: An eligible participant, who is a sporadic wage earner begins work on the sixteen day of the month, and then quits five days later, on the twenty-first. Since EID would typically go into effect on the first day of the month following the increase in annual income due to employment, does the participant loose one month of the disallowance? Or, does the "clock" ever start?

Answer: In this case, the EID should not be processed for the participant. The "clock" should not be started for this family member.

12. Question: What is the baseline income for an eligible family member who is earning $600 per month in a HUD funded training program (entire amount is excluded), and then gets a job while in the training program, earning $1,000 per month, and then graduates from the program?

Answer: In this case, the family member's baseline income is $0. The baseline income is the amount of the family member's income before the EID qualifying event. Since the family member's earnings under the HUD funded training program (**24 CFR 5.609(c)(8)(i)**) are excluded in the calculation of annual income, and the participant had no other income from wages or benefits, the baseline income is $0. For examples provided at the Rental Integrity Summit (RIS) training, see the PH - **Calculation Problem Areas, Section 4, Earned Income Disallowance (EID)** and the **HCV- Calculation Problem Areas, Section 4, Earned Income Disallowance (EID) PowerPoint slides**.

13. Question: Under the HCV program, PHAs are only required to keep tenant files for a period of three years (24 CFR 982.158(e)). What if an EID participant leaves the HCV program and then returns 3 ½ years later, after the PHA has already purged his or her previous record?

Answer: In order for the PHA to be aware of the individual's prior receipt of EID and the number of months he or she received the exclusion, the individual would have had to report the information, or the PHA would have had to retain a record of the individual's participation for longer than the HUD required three-year period. Because HUD regulations limit a participant's exclusionary period to 48-months in a lifetime, the Department strongly recommends ***all*** PHAs carefully track and retain the records of EID participants for as long as necessary. HUD also recommends PHAs (1) adopt policies that require relevant documents to be provided by former participants claiming they received EID in years' prior; (2) improve the interviewing skills of their staffs; (3) develop comprehensive data collection tools; (4) and make the maximum use of **up-front income verification (UIV)** tools to prevent and detect false statements.

That being said, if after being re-admitted into the HCV program, or into public housing, the individual qualifies for EID and he or she cannot provide evidence of the prior EID, and the PHA has not been able to locate and verify the individual's prior record, the PHA must give the individual the EID, *starting* from the date the he or she experiences an increase in annual income as a result of one of the three qualifying factors.

14. Question: If a PHA incorrectly determined the amount of the exclusion under EID, and therefore too much income was excluded, can the PHA collect the overpayment from the family? If not, will the PHA be sanctioned for this overpayment?

Answer: If the PHA incorrectly determined the tenant's rent, as a result of PHA error, the PHA would be required to correct the tenant records and ensure accurate rent payment, prospectively. In accordance with **Notice PIH 2003-34**, if the PHA does not implement corrective actions or rectify errors in meeting program requirements uncovered during a RIM review, the Field Office will impose sanctions and seek to recover amounts due to HUD in disallowed costs. *Tenants are not responsible for rent underpayments (PHA overpayments) due to PHA error*.

15. Question: How much latitude or flexibility does a PHA have in defining "participation" in an economic self-sufficiency program (for purposes of determining whether someone qualifies for EID)? For example, can a PHA define "participation" to mean that a person must participate in an activity for a minimum number of hours per week/month?

Answer: The regulation, **24 CFR 5.603(b)**, provides the definition of an economic self-sufficiency program. Beyond the definition of the types of activities, there is no guidance on defining "participation." A PHA should rely on program sponsors to provide established and written guidelines that define satisfactory participation in an economic self-sufficiency program and include the PHA's policies and procedures.

16. Question: Can a PHA that did not have ceiling rents already established as of October 1, 1999 establish ceiling rents now, in 2004? If not, on what policy is this based?

Answer: No. PHAs that did not have ceiling rents as of October 1, 1999, the effective date of the 1998 QHWRA, cannot establish traditional ceiling rents now. Pursuant to **Section 523(B) of the 1998 QHWRA**, allowable rent structures include flat rents (**24 CFR 960.253(b)**) and income-based rents (**24 CFR 960.253 (c)**). However, the 1998 statute (**Section 523(B)(ii)(II)**) and the regulation (**24 CFR 960.253(d)**), give PHAs the discretion to impose (establish) a ceiling on income-based rents, but they must be adjusted to the level required for flat rents and comply with rent option requirements under **24 CFR 960.253(a)**.

17. Question: What if a PHA that had ceiling rents as of October 1, 1999 misunderstood the statutory requirement, and, as a result, discontinued their ceiling rents. Can a PHA reinstate them now, as long as they are at the flat rent level?

Answer: Yes. Pursuant to **Section 523(A)(ii) of the 1998 QHWRA**, if a PHA had ceiling rents as of October 1, 1999, and later, discontinued ceiling rents, it can reinstate them now, so long as they are adjusted to the level required for flat rents (**24 CFR 960.253(b)**). Ceiling rents, however, are subject to the rent option requirement under provision **24 CFR 960.253(a)**.

Assets And Income From Assets

18. Question: The slide (pg. 114) in Calculation Problem Areas, Section 5, Assets and Asset Income states that the PHA can establish a minimum threshold for counting assets disposed of for less than fair market value. Is this true or false?

Answer: The regulation (**24 CFR 5.603(b)**) does not specify a minimum threshold for counting assets disposed of for less than fair market value. Consistent with **Handbook 4350.3 - Rev 1, *Occupancy Requirements of Subsidized Housing Programs* (Chapter 5, 5-7)**, PHAs may establish a threshold in its Administrative Plan (**24 CFR 982.54**) or Annual Plan (**24 CFR 903.7**) that will enable them to ignore small amounts such as charitable contributions (e.g., cash donations to the local food bank, church, etc.).

19. Question: Is a PHA required to pay for a formal appraisal in order to determine the net cash value of real estate property?

Answer: No. However, the PHA must use a reasonable basis for assigning value to real estate property. For example, third-party verification, such as online sources (e.g., **HomeValueHunt.com**, **REALTOR.com**) is an acceptable means for obtaining the value of property assets for families reporting real estate property at reexaminations. In some cases, it is acceptable for the PHA to review original documents provided by the tenant. However, before implementation, the PHA is required to state in its Annual Plan (**24 CFR 903.7(d)**) and/or Administrative Plan (**24 CFR 982.54**) the PHA's policy for determining the value of family assets; and, during interim and annual reexaminations, if third-party verification is not obtained, the PHA must document in the family's file why third-party verification was not available (**24 CFR 982.516(a)(2)** and **24 CFR 960.259(c)**).

HUD is aware that in some situations the asset or expense to be verified may not be cost effective to obtain third-party verification when the impact on the **total tenant payment (TTP)** is minimal. That said, PHAs should always begin with the highest level of verification (**up-front income verification (UIV)**), in accordance with **Notice PIH 2004-1, Verification Guidance**, issued March 9, 2004.

20. Question: How should a PHA determine the cash value of a retirement account, such as a 401(k), if it is unable to obtain verification of the cash value of the account?

Answer: If the PHA is unable to verify the tenant's 401(k) account balance, the penalty for premature withdrawal (usually 10 percent), and tenant and employer contributions with the independent source (i.e., employer), the PHA may use tenant supplied documentation to determine and verify the cash value of the asset. However, the PHA must document in the tenant's file why third-party verification was not available (**24 CFR 982.516** and **24 CFR 960.259**). See the **Notice PIH 2004-01, Verification Guidance** for a complete discussion on HUD-established verification policies for income, assets, and expenses.

21. Question: Regarding stocks and mutual funds, is the asset income equal to the appreciated share value, dividends paid, or both?

Answer: As stated in the regulation (**24 CFR 5.609(b)(3)**), when the family has net family assets in excess of $5,000, the asset income is the greater of the actual income derived (e.g., interest or dividends earned) from all net family assets or a percentage of the value of such assets based on the current passbook savings rate. When net family assets are $5,000 or less, the asset income is the actual income from assets. For a complete discussion and examples, see the **Housing Choice Voucher Program Guidebook, Chapter 5, 5.4** and the **Public Housing Occupancy Guidebook**, Chapter 10, pgs. 121-122)

22. Question: If there are two sisters, both living in public housing although in separate units, and both sisters' names are on both sisters' savings accounts, how is this handled when calculating income from assets? Are both savings accounts counted for each sister?

Answer: Yes. If both sisters living in public housing, although in separate units, have *access* to amounts derived from each sister's savings account, then both assets (i.e., savings accounts) would be considered when calculating income from assets for both households (**24 CFR 5.609(a)(4)**).

23. Question: Since there is limited guidance on the treatment of trust accounts under the provisions for public housing and HCV (24 CFR 5.603(b)) programs, can PHAs use the guidance provided in HUD Handbook 4350.3 Rev - 1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*?

Answer: Yes. For a complete discussion on the treatment of assets in determining income from assets, PHAs may refer to **HUD Handbook 4350.3 Rev - 1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*** (**Chapter 5, 5-7G**).

24. Question: If a broker refuses to give a PHA the broker's fee, can a PHA establish a set broker's fee (based on an average) that will be used in determining the net cash value of real property?

Answer: In accordance with the new **Notice PIH 2004-01, Verification Guidance**, if the PHA is unable to obtain third-party verification because the independent source will not facilitate the PHA's request, the PHA may review tenant provided documents (i.e., broker's fee, settlement costs for real estate transactions, legal fees, etc.) to determine the net cash value of real property.

25. Question: If a tenant sells his house to his son, but holds the deed of trust while the son makes monthly payments, how is this handled when determining assets?

Answer: As provided in the regulation (**24 CFR 5.609**), annual income includes amounts derived from assets, during the 12-month period, to which a family member has *access*. Since the tenant has access to amounts derived from the house, it is considered an asset and used in the determination of annual income.

26. Question: If a mother is listed on the title of her daughter's home in order for her daughter to qualify for a loan, is the home considered an asset to the mother who is residing in public housing?

Answer: See **Question 27** above.

Utility Allowance

27. Question: On the public housing lease agreement with tenants, do utilities have to be specified exactly? Or, is it acceptable to state, "electric, water, sewer, trash, gas, as applicable"?

Answer: According to (**24 CFR 966.4(a)(iv)**), the lease must state what utilities, services, and equipment are to be supplied by the PHA and what utilities and appliances are to be paid for by the tenant. When maintaining a utility allowance schedule for all tenant-paid utilities (**24 CFR 982.517(b)(ii)**), the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); and other specified housing services. The cost of each utility and housing service category must be stated separately.

28. Question: If the owner charges the household for water, does the utility have to be sub-metered (or check-metered) for the tenant to get the allowance?

Answer: No. There are two basic ways to determine utilities allowances: (1) Engineering based-allowances based on calculations, standardized consumption tables for a given area, or in-house information (e.g., derived from energy audit); or (2) Consumption based method-allowances are determined using actual consumption data (check-meters and/or individual-meters) from dwelling units in the PHAs portfolio. For specific on how to calculate, go to **http://www.hud.gov/offices/pih/programs/ph/phecc/allowances.cfm**

29. Question: If a PHA is doing an interim reexamination in the HCV program and the utility allowance has changed since the last annual reexamination, should the PHA use the old or new utility allowance?

Answer: Pursuant to **24 CFR 982.517(d)(2)**, the PHA must use its current utility allowance schedule at reexamination.

Non-Citizen Issues

30. Question: If an INS verification (SAVE System) shows "status = pending," does the PHA prorate assistance for an applicant or participant?

Answer: No. Pursuant to **24 CFR 5.514(b)(i)** and **24 CFR 5.14(2)**, an applicant or a tenant's assistance cannot be delayed, denied, or reduced when the immigration status of the family member has not been determined or concluded.

Adjusted Income-Childcare Expenses

31. Question: If a family has a child under the age of five and chooses to put the child into a pre-school instead of a daycare, does the family get the much higher pre-school rate (i.e., childcare expense deduction)? Or, should a PHA only deduct what the daycare amount would have been had the child been enrolled in a daycare?

Answer: Pursuant to the new **Notice PIH 2004-01, Verification Guidance**, the PHA may not choose the type of childcare to be provided for the head of household's child(ren). If provisions are met under **24 CFR 5.603(b)**, then the family must be given the childcare expense deduction, pursuant to **24 CFR 5.611(a)(4)**.

Reexamination Process

32. Question: Can a PHA set a policy to conduct interim reexaminations only for FSS participants? What about only FSS participants who have increases in income?

Answer: Yes. Pursuant to **24 CFR 960.257(c)** and **24 CFR 982.516(b)**, the PHA has discretion to set a policy to conduct interim reexaminations only for family self-sufficiency (FSS) participants, including those who have increases in income. However, the PHA's policy must be written in its ACOP or Administrative Plan (**24 CFR 982.54**) and Annual Plan (**24 CFR 903.7**) and consistently applied to all FSS participants.

33. Question: Is it mandatory for the annual reexamination date to always match the admission date? For example, the family was admitted on January 2, 2003, so the annual reexamination must be conducted for January 2, 2004.

Answer: No. Although PHAs must conduct a reexamination of family income and composition at least annually (**24 CFR 960.257(a)** and **24 CFR 982.516(a)**), PHA's have the discretion to set and establish in its Annual Plan (**24 CFR 903.7** and Administrative Plan (**24 CFR 982.54**) when and under what circumstances they will conduct such reexaminations. And, considering a *family* may request, at any time, an interim reexamination of family income or composition because of any changes since the last determination (e.g., annual reexamination), the date of admission and the date of the annual reexamination will more than likely be different.

34. Question: If a PHA has a different interim reexamination policy for residents receiving EID, would the policy be considered to be discriminatory against disabled individuals?

Answer: Similar to **Question 34**, the same rule applies. The PHA has discretion to set a policy to conduct interim reexaminations only for EID participants. However, the PHA's policy must be written in its Administrative Plan (**24 CFR 982.54**) and Annual Plan (**24 CFR 903.7**) and consistently applied to ***both*** public housing (any eligible family member) and HCV (only eligible disabled family members) program participants.

35. Question: What if a third-party verification is returned after the effective date of the annual reexamination? Does the PHA have to consider it and recalculate rent? If yes, is this considered an interim reexamination for purposes of the action code on the Form HUD-50058? Is the answer the same irrespective of my interim reporting policy?

Answer: If a third-party verification is returned after the effective date of the annual reexamination, the PHA must conduct an interim reexamination, considering the data, and recalculate the tenant's rent, if the data is different from what was used at the annual reexamination. The PHA would record the new data on **Form HUD-50058**, as an action code 3 = Interim Reexamination.

HUD Form-50058 (*New Topic*)

36. Question: The regulation (24 CFR 5.609(b)(2)) states that the net income from the operation of a business is included in annual income and that when determining net income expenditures for business expansion or amortization of capital indebtedness shall not be deducted. The regulation goes on to state that an allowance for depreciation of assets used in a business may be deducted, based on straight-line depreciation.

The Form HUD-50058 Instruction Booklet seems to conflict with the regulation. It instructs PHAs to list expenditures for business expansion, amortization of capital indebtedness, and an allowance for depreciation as "exclusions" from income in column 7e. This appears to be incorrect. Although these three items are considered in determining net income, they are not exclusions from income. Should PHAs disregard the HUD Form-50058 instructions, in this instance?

Answer: Yes. In this case, you should use the regulatory policy. The booklet will be modified to clarify this matter.

37. Question: Is it acceptable for a PHA to record an application for housing assistance in the computer, while the applicant is present, and have him or her sign the printout?

Answer: Yes. If the PHA is using its computer system to receive data from an applicant for housing assistance, and instead of collecting the data on paper, the PHA Intake Specialist enters the data into the computer system, prints it off, and the tenant signs it, this would be acceptable to HUD.

General Questions

38. Question: What is the status of the automated rent calculator designed by the Office of Policy Development and Research?

Answer: The automated rent calculator project has been discontinued.

VERIFICATIONS FAQS

39. Question: Will HUD require verification of the amount of income that is excluded?

Answer: Yes. In accordance with **24 CFR 960.259(c)(1)(i)** and **24 CFR 982.516(2)(i)**, PHAs must obtain adequate documentation to reasonably determine the excluded amount of income. If without that verification, a PHA would not be able to determine whether the income is to be excluded when calculating annual income. Depending on the circumstances, any or all of the following may need to be verified: source of excluded income, circumstances that qualify a family member's income to be excluded, and the amount of the exclusion.

40. Question: Will HUD be providing a template for documenting third-party oral verifications?

Answer: Yes. HUD has provided examples of file documentation of third-party oral verifications (See the new **Notice PIH 2004-01, Verification Guidance**). The documentation of oral third-party verification should include the date and time of the oral verification, along with the organization name, employee name and title, telephone number, and information verified by the individual.

41. Question: We have a problem with obtaining food stamp data from the local TANF agency; it is reluctant to release this data, due to its established, written polices. Since the tenant does not always know how much he or she receives monthly, how can the PHA verify TANF payments, services, and benefits?

Answer: In the event the PHA does not receive a written or oral response to third-party verification requests, the PHA may review original tenant-provided documents. For example, the TANF benefit letter, or the current TANF benefit amount for the appropriate household size listed on the State's current TANF payment schedule. However, in accordance with **24 CFR 960.259** and **24 CFR 982.516**, the PHA must document in the family file why third-party verification was not available.

42. Question: Since PHAs cannot pass the cost of doing business to the family (e.g. obtaining verification, notarizations), can the PHA claim reimbursement from HUD through the housing assistance payment (HAP) account?

Answer: No. The PHA may not claim a reimbursement from HUD through the HAP account for verification costs. HUD provides PHAs with administrative fees to cover the cost of doing business (**24 CFR 982.152**).

43. Question: Why must PHAs request and verify income of minors that are excluded? Many jobs such as snow removal, lawn care, or babysitting are difficult to verify. The tenant will have a difficult time providing an amount, which is not even counted in the calculation of annual income. This would upset some tenants because PHAs are asking for the amounts, but not counting them. Should PHAs limit minor wages to what the minor would actually receive on a W-2?

Answer: The PHA has the responsibility of establishing procedures that are appropriate and necessary to assure that income data provided by the applicant or participant families is complete and accurate. HUD requires the PHA to obtain third-party verification of reported family annual income in accordance with **24 CFR 960.259(c)(1)(i)** and **24 CFR 982.516(2)(i)**.

44. Question: Can a PHA amend Form HUD-9886 to include additional sources of income?

Answer: No. A PHA may not amend **Form HUD-9886** to include additional sources of income. The Form HUD-9886 specifically authorizes HUD to obtain third-party verification of income information from the Social Security Administration (SSA) and income return information from the Internal Revenue Service (IRS). The HUD Form 9886 also specifically authorizes the PHA to obtain third-party verification of income information from State Wage Information Collection Agencies (SWICAs) and income information from previous and current employers.

45. Question: What should a PHA do if a State is unresponsive to requests for third-party verification of unemployment or workers compensation?

Answer: In the event the PHA does not receive a written or oral response to third- party verification requests, the PHA may review original tenant-provided documents. If the tenant is unable to provide the PHA with original documents, as a last resort, the PHA may accept a tenant declaration. In accordance with **24 CFR 960.259** and **24 CFR 982.516**, the PHA must document in the family file why third-party verification is not available.

46. Question: Does a PHA have to run a criminal background or credit check, and check UIV and TASS for an eligible non-citizen, who just entered the U.S., if the non-citizen has proof that he or she just came from another country? Can the non-citizen just provide the INS document, showing he or she just entered the U.S.?

Answer: The PHA has the responsibility of preventing crime in federally assisted housing. The PHA should complete a criminal background check and should use the SAVE system on all applicants, regardless of their arrival date into the United States. Once the applicant has been admitted into a HUD-assisted unit, the PHA should utilize all **up-front income verification (UIV) tools** and systems (**UIV System** and **TASS**) to verify accurate disclosure of income by the family. The PHA must establish procedures that are appropriate and necessary to assure that income data provided by the applicant or participant families is complete and accurate (**24 CFR 982.516(f)** and **24 CFR 960.259(4)**).

47. Question: Can a PHA use IRS Form 4506 instead of IRS Letter 1722? The IRS Form 4506 permits the mailing of the return to a third-party, which would be the PHA.

Answer: The IRS Letter 1722 is no longer in existence. PHAs may use **IRS Form 4506** to request a copy of a tax return. However, there is a fee of $39 for this service. It may take up to 60 calendar days for the IRS to complete a request for a tax return.

PHAs may request a transcript of a tax return by completing **IRS Form 4506-T** at no cost. Most requests will be processed within 10 business days. However, if the information requested relates to information from a return filed more than four years ago, it may take up to 30 days. On either form, the PHA may specify that the information be mailed to the PHA directly (i.e., third-party verification).

48. Question: How does HUD feel about blanket verification and generic consent forms?

Answer: HUD does not encourage the use of blanket consent forms. However, HUD regulations (**24 CFR 5.230(c)**) do not prohibit the use of such forms. PHAs should consult with their legal counsel to ensure that local and state laws do not prohibit the use of blanket consent forms.

49. Question: Does HUD require a notarized statement from each head of household stating the household's "total household income" on one statement? If so, will a PHA be required to obtain these documentations more than once? Are school emergency cards required?

Answer: No. HUD regulations (**24 CFR 960.259** and **24 CFR 5.240**) do not require notarized statements from households that declare the "total household income," nor do they require school emergency cards. PHAs are, however, required to conduct a reexamination of family income and composition at least annually and verify tenant-supplied documentation (**24 CFR 960.257(a)** and **24 CFR 982.516(a)**). If the PHA decides to require these types of documents from tenants, it must be written its Administrative Plan (**24 CFR 982.54** and/or Annual Plan **24 CFR 903.7**).

50. Question: Is a picture ID required, if there is a birth certificate in the adult tenant's file for establishing legal identity?

Answer: A birth certificate does not establish an adult's legal identity in determining citizenship for eligibility. Therefore, a PHA may request a picture ID from an adult for this purpose. HUD regulations (**24 CFR 5.508(b)(1)**) give PHAs the discretion to determine what appropriate documentation an applicant or participant is required to furnish to the PHA. Although not inclusive, the following are acceptable documents to establish identity:

- U.S. Passport
- Certificate of U.S. Citizenship (INS Form N-560 or N-561)
- Certificate of Naturalization (INS Form N-550 or N-570)
- Valid foreign passport, with I-551 stamp or attached INS Form I-94 indicating unexpired employment authorization
- Permanent Resident Card or Alien Registration Receipt Card with photograph (INS Form I-151 or I-551)
- Valid Employment Authorization Card (INS Form I-688)
- Valid Reentry Permit (INS Form I-571)
- Valid Employment Authorization Document issued by INS, which contains a photograph (INS Form I-688B)
- Driver's license or ID card issued by a state or outlying possession of the United States

51. Question: It is clear that verification documents cannot be older than 60 days for new admissions and 120 days for reexaminations. What is not clear is age of documents from the effective date of action? Is it from the effective date of the annual reexamination, if a voucher is not issued; the date of voucher issuance for new admissions and portables; or is it from the date of the interview with the client or the day the file is "worked up"?

Answer: The age of verification is determined by using the interview date in which the information is provided to the PHA. Pursuant to **Notice PIH 2004-01, Verification Guidance** (pg. 10), verification documents must not be more than 60 days old from the interview date.

52. Question: Based on the Verification Guidance Notice that is soon to be issued, will PHAs be required to attempt written third-party prior to oral, as opposed to the regulations, which don't distinguish between the two types of third-party verifications?

Answer: Yes. While the regulations (**24 CFR 960.259(c)** and **24 CFR 982.516(a)**) do not specify what type of third-party verification is required, through the issuance of **Notice PIH 2004-01, Verification Guidance**, HUD requires PHAs to follow the hierarchy of verification methods. If UIV is not available, the PHA is expected to pursue written third-party verification and if the PHA does not receive a response to its written request for information, the PHA may then resort to oral third-party verification.

53. Question: Are there any benefits to having families provide notarized statements?

Answer: The only benefit that a notarized statement has is that the identity of the signer is verified.

54. Question: A PHA receives UIV data and conducts a recertification; after which, data is returned from a third-party. The third-party shows that a tenant will make more than anticipated using UIV, but the increase is below the $200 per month threshold, as allowable per HUD guidance. Can a PHA set a threshold amount for conducting interim reexaminations, based on the receipt of the third-party verification?

Answer: Yes. A PHA may set a threshold amount by which the PHA will require an interim reexamination (**24 CFR 960.257(c)** and **24 CFR 982.516(b)**), as a result of an increase in family household income. This policy must be incorporated in the PHA Administrative Plan (**24 CFR 982.54**) or Admissions and Continued Occupancy Plan (ACOP).

55. Question: A family declares that it has received a "loan" from a family member who resides outside of the assisted family household. The family member who loaned the money has signed a declaration certifying the amount and terms of the loan. Is this "loan" excluded from annual income? Can a PHA establish a policy that requires a tenant to provide documentation that they are actually repaying the loan in order for the loan amount not to be considered annual income?

Answer: In response to the first question, a loan is excluded from annual income, as it is a debt that must be repaid (**24 CFR 5.609(c)(9)**). In the event that the debt is unpaid or forgiven, the loan is considered nonrecurring or sporadic income and is still excluded from annual income. In response to the second question, the family must supply any information that the PHA or HUD determines is necessary in administration of public housing or HCV programs (**24 CFR 5.659** and **24 CFR 960.259**). As such, the PHA may establish a policy to specify what documents a tenant must provide to the PHA, as long as the requested documents are applicable to the administration of the programs.

56. Question: If a third party (e.g., employer, banking institution, school, etc.) has notified the PHA that it charges the tenant a fee for providing third-party verification, does the PHA have to request from that source for each tenant file? Or, is it sufficient to have a written statement in the file documenting the requirement to pay a fee?

Answer: If a third party source charges a fee for verification, the PHA may simply make a photocopy of the letter or statement from the source that confirms the imposition of a verification fee and place a copy of the letter or statement in each tenant file in which the fee is applicable.

57. Question: If a local SSA has informed a PHA that it will not provide third-party verification directly to the PHA, does the PHA have to notate every tenant file explaining the circumstances, or can the PHA establish one central file that contains the reasoning?

Answer: The local SSA will no longer provide verification of SS benefits, so the PHA must use TASS to verify benefits. If the information is not available in TASS, the PHA must document in each tenant file the reason third-party verification was not available. Below are some examples of acceptable file documentation:

- New admission, information not available in TASS
- New tenant, information not available in TASS
- Current tenant, information not available in TASS due to a change in the re-examination date
- Current tenant, information not available in TASS due to discrepancy with name, date of birth, or SSN in SSA file

HUD 50058 Instruction Booklet

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Family Report

Form HUD-50058
Instruction Booklet

June 28, 2004

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Introduction

The Form HUD-50058 Instruction Booklet will help you understand and complete the Form HUD-50058.

What is the purpose of the Form HUD-50058?
The data collected on the form provides HUD with a picture of the people who participate in subsidized housing programs. Public Housing Agencies (PHAs) collect and electronically submit information contained on the Form HUD-50058 to HUD. The Public and Indian Housing Information Center (PIC) system then captures this information and creates reports used to:

- analyze the subsidized housing programs,
- monitor PHAs,
- detect fraud, and
- provide information to Congress and other interested parties.

What is the purpose of the Form HUD-50058 Instruction Booklet?
HUD prepared and distributed the Form HUD-50058 Instruction Booklet to help ensure the accuracy and consistency of the information collected. This booklet explains each line of the Form HUD-50058 and the information collected for each line item.

Where do I find information on field edits and flat file transmission requirements?
To target audiences with appropriate information, HUD created a separate document that contains the field edits and flat file transmission requirements called the *Form HUD-50058 Technical Reference Guide*. Interested users can find the Guide on the HUD Web site <http://www.hud.gov/offices/pih/systems/pic/50058/pubs/trg/index.cfm>.

General Information for Completing Form HUD-50058

What are the major differences between this Form HUD-50058 (6/2004) and the previous version (6/2001)?

HUD revised the Form HUD-50058 to remove obsolete and unnecessary lines of requested data. The revised form contains 27% fewer lines and three fewer pages. The items removed from the existing Form HUD-50058 include: section 14 (Manufactured Home Owner Renting the Space), section 16 (Indian Mutual Help), some Welfare to Work (WtW) elements of section 17 (Family Self-Sufficiency (FSS)/Welfare to Work (WtW) Voucher Addendum), reserved fields, and references to Indian Housing, including program code B = Indian Housing in line 1c, and Pre-merger Certificates.

HUD also removed lines numbered and labeled as follows: (2e) - “Date correction transmitted”, (2f) - “Repayment agreement?”, (2g) – “Monthly amount of repayment”, (2n) - “Other special programs: Number 03”, (2n) – “Other special programs: Number 04”, (2n) – “Other special programs: Number 05”, (2p) – “Use if instructed by HUD”, (3s) – “Continued on an additional sheet?”, (8u) – “Total annual travel cost to work/school (Indian Housing only)”, and (11a) – “Number of bedrooms on certificate”.

What are the special rules for families that participate in the Family Self-Sufficiency (FSS) and/or Welfare to Work (WtW) Voucher Program(s)?

- If the family participates in the FSS program and you complete Form HUD-50058 for any action other than an FSS action only (line 2a, action other than 8), and the family participated in the FSS program in the past year (line 2k = Y), complete all applicable sections on Form HUD-50058. Additionally, complete the FSS/WtW Voucher Addendum.

- If the family participates in the Welfare to Work (WtW) Voucher program (indicated in line 2m) and you complete Form HUD-50058 for any action other than a WtW action only (line 2a, action other than 8), complete all applicable sections on Form HUD-50058. Additionally, complete the FSS/WtW Voucher Addendum.

- If you complete Form HUD-50058 for a family that has an FSS/WtW Voucher action only (2a = 8), complete the applicable section on the Form HUD-50058, then skip to the FSS/WtW Voucher Addendum.

Reporting Requirements

What are the PIC Form 50058 reporting requirements?

PHAs are required to submit Form HUD-50058 data at least annually for each household that participates in PIH assisted housing programs. Public Housing Agencies (PHAs) must electronically submit all Form HUD-50058 data to the PIC System. The Department requires complete, accurate and timely submission of Form HUD-50058 data to the PIC System for effective program monitoring.

What can I do if my PHA fails to report data to PIC for some of its assisted tenants?
Reserved.

Privacy Act Notice and Nondiscrimination Requirement

What is the Privacy Act Notice?
Collection of information on Form HUD-50058 is subject to the requirements of the Privacy Act of 1992, Section 508(d). The Notice is a general authorization form and does not replace specific forms that PHAs currently use to verify information about applicants or participants. PHAs must give a Form HUD-9886, Authorization for the Release of Information/Privacy Act Notice to**:**

- all applicants at the time the PHA evaluates their eligibility for housing assistance, and
- all Public Housing residents and all Housing Choice Voucher and Moderate Rehabiliation program participants at each annual reexamination or interim reexamination.

What family members must sign the Privacy Act notice?
The head of household and spouse or co-head, regardless of age, and each adult member in the household at the time of the initial examination must sign the Notice. It is **mandatory** that each additional adult member who lives in the household sign the Notice. During a reexamination, PHAs must also obtain signatures from any new adult who joins the household and from household members who have reached 18 years of age. **Failure of the applicant or participant to sign the Notice constitutes grounds for denial of eligibility or termination of assistance or tenancy.** PHAs must keep a signed copy of the Authorization for the Release of Information/Privacy Act Notice in the tenants' files.

Where can I find more information on the Privacy Act Notice?

- For a copy of *Form HUD-9886, Authorization for the Release of Information/Privacy Act Notice*, see HUD's Client Information and Policy System on the Web at <http://www.hudclips.org/sub_nonhud/html/forms.htm>
- For more information on the Privacy Act Notice and Form HUD-9886, see *Notice PIH 94-36 (PHA), issued June 13, 1994*.

Does Section 504 of the Rehabilitation Act of 1974 (29 USC 794) as amended apply?
Yes, Section 504 applies. PHAs may not deny persons with disabilities assistance in the Public Housing, Housing Choice Voucher or Moderate Rehabiliation programs. The law specifically states "No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service."

Form Conventions

What are the data entry conventions for submitting data to PIC?

- **Dates:** Include the four-digit year for all fields that require the entry of a date. Enter the date in any standard format (i.e., "MM/DD/YYYY or MM-DD-YYYY"). You must enter the year in its entirety.
- **"/"** means "or" unless otherwise noted.
- **Monetary figures:** enter only whole dollar amounts. Do not show cents, commas, or dollar signs. Enter $350.26 as $350.
- **Rounding:** round each monetary amount *up* when a number is .50 or above; *down* when a number is .49 or below.
- **Calculation:** a scratch area where Public Housing Agencies may perform manual calculations. The column entries do not transmit to HUD.
- **Mixed Family:** a family that contains both eligible and ineligible members who may be subject to prorated rent under the Noncitizens Rule.
- **Negative numbers:** when calculations result in negative numbers, enter 0 (zero), unless the form instructs otherwise.
- **PHA use only:** use for your PHA tracking purposes.

What are the common acronyms used in the form and Instruction Booklet?

FMR = Fair Market Rent
FSS = Family Self-Sufficiency program
HAP = Housing Assistance Payment
HOPE = Homeownership and Opportunity for People Everywhere
HQS = Housing Quality Standards
HUD = Department of Housing and Urban Development
USCIS = Bureau of U.S. Citizenship and Immigration Services
OMB = Office of Management and Budget
PHA = Public Housing Agency
SRO = Single Room Occupancy
SSA = Social Security Administration
SSI = Supplemental Security Income
SSN = Social Security Number
TANF = Temporary Assistance for Needy Families
TIN = Taxpayer Identification Number
TTP = Total Tenant Payment
WtW = Welfare to Work

Additional Resources

Where can I receive further technical and program assistance?

We hope the Instruction Booklet answers most of your questions about the Form HUD-50058. Please direct additional questions to one of these resources:

- *The **PIC Help** Hotline* provides technical assistance in the completion and transmission of Form HUD-50058. The Hotline is available Monday - Friday, between the hours of 8:00 AM and 8:00 PM, Eastern Standard Time (excludes Federal Holidays). For assistance, call the Hotline at: 1-800-366-6827. Users can also send email to PIC Help at pichelp@hud.gov.
- *The PIC Form 50058 Forum* is a vehicle for on-line questions and answers. HUD headquarters, HUD Field Offices, Public Housing Agencies, and vendors use the site to resolve problems they have, post useful tips and suggestions, as well as lend their experience to situations that others face. The PIC Form 50058 Forum is located on the HUD Web site at:
  <http://www.hud.gov/offices/pih/systems/pic/50058/forums.cfm>.
- A HUD Field Office Representative
- A HUD Headquarters Program Specialist for questions regarding
  - Housing Choice Vouchers
  - Mod Rehab
  - Public Housing, voucher and mod rehab Occupancy and Admissions
  - Family Self-Sufficiency and Welfare to Work
- PIH Information and Resource Center (IRC) for program related questions at 1-800-955-2232.

Where can I find additional information on PIC and the Form HUD-50058?

The following resources provide additional information for staff who complete the Form HUD-50058:

- **The Code of Federal Regulations** contains the codification of the general and permanent rules published in the Federal Register by the Federal Government, executive departments and agencies. For the code section that applies to HUD programs, see **Title 24, Housing and Urban Development**. Code of Federal Regulations information is available on the Internet at <http://www.gpoaccess.gov/cfr/index.html >.
- **The Quality Housing and Work Responsibility Act of 1998,** commonly known as the **Public Housing Reform Act (PHRA)**, is landmark legislation that aims to:
  - reduce the concentration of poverty in public housing,
  - protect access to housing assistance for the poorest families,
  - merge and reform the Section 8 Certificate and Voucher programs, and
  - support HUD management reform efficiencies through deregulation and program consolidation.

  Additional information about PHRA is available on the Internet at <http://www.hud.gov/offices/pih/phr/index.cfm

  1937 Housing Act is the law that authorizes the Public and Indian Housing and Section 8. The Act is available on the Internet at <http://financialservices.house.gov/banking/usha1937.pdf >.

- **The Social Security Handbook** summarizes information about Social Security programs and

contains brief descriptions of related programs that other agencies administer. The handbook covers the primary programs that affect public housing residents, which include;

- retirement insurance,
- survivors insurance,
- disability insurance,
- supplemental security income, and
- public assistance and welfare services.

The Handbook is available on the Internet at <http://www.ssa.gov/OP_Home/handbook/ssa-hbk.htm >.

- ***Homes and Communities*** is HUD's web site on the Internet and is a source for information about HUD programs.
  Homes and Communities can be found on the Internet at <www.hud.gov>.

- **PIC Form-50058 web site** is a source for information about the PIC Form-50058 module. This site includes links to:
  - PIC Form 50058 Forum (on-line question and answer),
  - Data and related reports
  - PIC Form 50058 documentation and resources, and
  - PIH Notices.

  The PIC Form-50058 web site can be found at < http://www.hud.gov/offices/pih/systems/pic/50058/index.cfm >.

- **Form HUD-50058 Technical Reference Guide** contains the Form HUD-50058 field edits and flat file transmission requirements. The Guide is available on the Internet at <http://www.hud.gov/offices/pih/systems/pic/50058/pubs/trg/index.cfm >.

- **HUD's Client Information and Policy System**, known as HUDCLIPS, is the source to download all HUD forms; including the Form HUD-50058. HUDCLIPS can be found at <www.hudclips.org/subscriber/html/forms.htm>.

Page Heading

Head of household name:
At the top of every page, enter the head of household's last name (line 3b), first name (line 3c) and middle initial (line 3d). Use this field to identify the head of household if the pages of the form separate.

Social Security Number:
At the top of every page, enter the head of household's Social Security Number (line 3n). Use this field to identify the head of household if the pages of the form separate.

Date modified (mm/dd/yyyy):
At the top of every page, enter the date the PHA representative fills out the form or modifies any form page. If information on one page requires a correction, that page date will change when the PHA makes the correction. If information on other form pages does not change, the date modified will not change on those pages.

Section 1: Agency

1a. Agency Name:

Name of the Public Housing Agency (PHA) that completes the family's Form HUD-50058. Abbreviate the agency name as necessary, but include essential identification information.

When does my PHA report family data under voucher portability?

Under voucher portability, the receiving PHA should always report family data. Use the receiving PHA's name and number in the first section of the form. The receiving PHA can bill the initial PHA. However, PHA cannot bill another PHA for payments under a project-based HAP contract.

How does the PIC Form 50058 module populate this field?

The PIC Form 50058 module populates this field with data from other PIC modules or HUDCAPS based on the PHA code reported in 1b.

1b. PHA Code:

Five-character code composed of the 2-letter postal state code and 3-digit PHA number. This state code indicates the location of the reporting PHA and the number identifies each PHA within a particular state.

Example: If a PHA is in Florida, and its PHA number is 12, this is how the PHA code should be recorded:

- State Code: FL for Florida;
- PHA Number: 012 (to convert it to a 3-digit number, add appropriate number of zeros before the number);
- PHA code to be recorded**:** FL012

Where can I find standard state and territory codes?

See Appendix 1, Federal Standard State and Territory Codes, for a list of state and territory postal state codes.

Where can I find a PHA's number?

If the PHA number is unknown, call the PHA's state or area field office or contact the PIC Help Hotline at 1-800-366-6827 or pichelp@hud.gov. This information is also available on the PHA Profiles web site within PIC <http://www.hud.gov/offices/pih/systems/pic/haprofiles/index.cfm >.

Which PHA code should be used when my PHA administers another PHA's Housing Choice Voucher or Mod Rehab program?

If your PHA administers another PHA's voucher or mod rehab program, and the other PHA's Annual Contribution Contract (ACC) funds a family's assistance, use the PHA code for the PHA whose ACC funds the family's assistance. (This does *not* apply to portability.)

1c. Program:

Using the codes provided, indicate the housing assistance program in which the family participates. Enter a program code in the 2 boxes in line 1c from *left to right*. If there is only 1 letter to enter, complete the *first* box (the one to the left) only; if there are 2 letters to enter, complete both (first and second) boxes.

- **P** = Public Housing
- **CE** = Project-based Certificate
- **VO** = Housing Choice Vouchers
- **MR** = Moderate Rehabilitation (Mod Rehab)

Given these program types, what section of the Form HUD-50058 should I fill out to calculate tenant rent?

Sections 10, 11, 12, 13, and 15 of the Form HUD-50058 are used to calculate tenant rent. The PHA should fill out the one section of the form that corresponds to the program in which the tenant family participates. If the tenant family's program is:

- **Public Housing (1c = P)** – the PHA should fill out section 10 of the form.
- **Project-based Certificate (1c = CE)** – the PHA should fill out section 11 of the form.
- **Project-based Voucher (1c = VO)** – the PHA should fill out section 11 of the form.
- **Tenant-based Voucher (1c = VO)** – the PHA should fill out section 12 of the form.
- **Moderate Rehabilitation (1c = MR)** – the PHA should fill out section 13 of the form.
- **Homeownership Voucher (1c = VO)** – the PHA should fill out section 15 of the form.

1d. Project Number (Public Housing Only):

The project number is composed of the 2-letter project state code, 3-digit PHA number, 3-digit development number, and 3-digit suffix (if applicable).

Example: If a PHA is in Florida, its PHA number is 12, and the development number is 5, this is how the Project Number should be recorded:

- State Code: FL for Florida
- PHA Number: 012 (to convert it to a 3 digit number, add appropriate number of zeros before the number)
- Development Number: 005 (to convert it to a 3-digit number, add appropriate number of zeros before the number)
- Project Number to be recorded: FL012005

Suffix, if applicable (Public Housing Only):
HUD has assigned site numbers or suffixes to the project sites of some Public Housing Agencies. If the family lives in a project with a site number or suffix code, enter the 3-digit number or suffix here. If there is no site number or suffix, leave it blank.

1e. Building number (Public Housing only):
Six-character code to capture the tenant's building number. All PHAs should use the building numbers that correlate with Public and Indian Housing Information Center (PIC) data. HUD uses the PIC System to establish valid building numbers.

1f. Building entrance number (Public Housing only):
Three-character code to capture the tenant's building entrance number. All PHAs should use the entrance numbers that correlate with PIC data. HUD uses the PIC System to establish valid building entrance numbers.

1g. Unit number (Public Housing only):
Six-character code to capture the PHA designated tenant unit number. All PHAs should use the unit numbers that correlate with PIC data. HUD uses the PIC System to establish valid unit numbers.

Section 2: Action

2a. Type of action:

Report the type of action. Use the action codes that follow:

- *1 = New Admission:* Use this transaction when the family has:
  - Signed a lease (or occupancy agreement) with the PHA for the first time to occupy a dwelling unit operated under the PHA's Public Housing program
  - Signed a lease under the Voucher or Moderate Rehabilitation programs for the first time.
  - Experienced an interruption of over one month between his or her occupancy of one Public Housing unit and another Public Housing unit
  - Experienced an interruption of voucher assistance where the former PHA submitted an End of Participation action.
  - Moved from one PHA program to another (e.g., moved from a Public Housing project to the voucher program).

  Under what circumstances should a family not be reported as a New Admission?
  Do not report a New Admission for a transfer from one dwelling unit to another unit within the same PHA program. Use a reexamination code if the transfer is at the time of the regularly scheduled reexamination. Otherwise, report an Other Change of Unit (2a=7) if the family moved within the PHA's jurisdiction, or report a Portability Move-in (2a=4) if the family is moving from another PHA into your PHA's jurisdiction after being assisted by the other PHA.

  Do I report a New Admission if a family exercises portability with its first admission?
  If a family exercises portability with its first admission into the voucher program, the receiving PHA must classify this as a New Admission and not a Portability Move-in.

  How do I indicate FSS/WtW enrollment during a New Admission?
  If the family is a New Admission and is enrolling in the FSS/WtW program, report a New Admission and submit an FSS/WtW Addendum that indicates the family as a new FSS or WtW enrollment.

  Do I report a New Admission when a family moves from Public Housing to the voucher program?
  If a family moves from a Public Housing project to the voucher program, report a New Admission for the voucher Program, and an End Participation for the Public Housing program.

- *2 = Annual Reexamination*: The regularly scheduled annual reexamination of family income and circumstances.

  Under what circumstances is a reexamination not conducted on an annual basis?
  For public housing families that select a flat rent, the PHA must conduct a reexamination of income at least once every three years.

- *3 = Interim Reexamination*: The reexamination of family income and circumstances, other than at the regularly scheduled annual reexamination. An interim reexamination occurs at the request of the tenant as a result of a change in income status, addition or loss of a family member, or other circumstance that requires tenant rent adjustment. PHAs must adopt policies that prescribe when and under what circumstances a tenant family must report a change in family income or composition. (24 CFR 960.257(b); 24 CFR 982.518(c))

- *4 = Portability Move-In (VO only)*: Applicable to Housing Choice Vouchers only. Portability move into a new PHA jurisdiction.

  What is portability?
  Portability is renting a dwelling unit with Housing Choice Voucher assistance outside the jurisdiction of the initial PHA.

  When is a Portability Move-in classified as a New Admission?
  If a family exercises portability with its first admission into the voucher program, the receiving PHA must classify this as a New Admission and not a Portability Move-in.

5 = Portability Move-out (VO only): Portability move out of a PHA jurisdiction, regardless of whether the receiving PHA bills or absorbs the cost.

When should a Portability Move-out be reported?
Report a Portability Move-out only after the receiving PHA has executed a HAP contract on behalf of the family and returns the portability billing form to the initial PHA.

- *6 = End Participation*: The transaction where the head of household and all family members discontinue participation in the PHA program. Report an End Participation if the family moves from one PHA program to another.

  Example: A family moves from a Public Housing project to the Housing Choice Voucher program. Report an End Participation for the Public Housing program, and a New Admission for the voucher program.

  Under what circumstances should I not report an End of Participation?
  Do not report an End Participation for temporarily interrupted assistance (e.g., interrupted for one month or less for Public Housing program).

  Do not report an End Participation if the family is between assisted units in the voucher program.

- *7 = Other Change of Unit*: Use this code to report a move to a different unit within the same PHA program at a time other than the family's Annual Reexamination or an Interim Reexamination.

- *8 = FSS/WtW Voucher Only*: Use this code when the family enrolls, reports program progress, or exits the Family Self-Sufficiency (FSS) or Welfare to Work (WtW) Voucher program(s) at a time other than the time of another reported action for the family. The family continues to receive housing assistance.

- *9 = Annual Reexamination Searching (VO only)*: The family is due for an annual reexamination, but has moved from its former unit and is searching for a new unit.

- *10 = Issuance of Voucher (VO only)*: Anytime the PHA issues a Voucher to the family and the family begins to search for housing.

- *11 = Expiration of Voucher (VO only)*: The family fails to lease a unit and the Voucher expires. Report each voucher issuance and expiration, whether for a new admission or a participant who is moving.

- *12 = Flat Rent Annual Update (Public Housing only)*: Applicable only to families who select flat rent. The regularly scheduled annual update for a public housing family that chooses a flat rent. HUD requires the PHA to update family composition information each year.

  When does my PHA use this action code?
  The flat rent annual update is only conducted in the years that a reexamination is not conducted for families in Public Housing who choose flat rent. Families who select flat rent only require an annual reexamination at least once every three years. This code allows PHAs to update family composition data for families who selected a flat rent.

  Example: Public Housing family chooses flat rent.
  Year 1: New admission (2a=1) or Annual Reexamination (2a=2)
  Year 2: Flat Rent Annual Update (2a=12)
  Year 3: Flat Rent Annual Update (2a=12)
  Year 4: Annual Reexamination (2a=2)

- *13 = Annual HQS Inspection Only (tenant based vouchers, project based certificates only)*: To report the annual HQS inspection as a separate action if it happens at a time other than the time of another reported action for the family. The PHA is responsible to ensure that each annual HQS inspection is reported in a timely manner to PIC.

- *14 = Historical Adjustment*: To capture information for households who do not have a New Admission (line 2a=1) recorded in PIC, but require an action other than a new admission or an issuance of voucher. Historical Adjustment will serve as the baseline action for the household.

  When does my PHA use this action code?
  PHAs may use action code 14 in cases where the family was never successfully reported to the PIC system and is not a New Admission (*i.e.*, the family has been assisted by a PHA for over one year). However, as PHA must report newly admitted households to HUD in a timely manner, action code 14 should rarely be used.

- *15 = Void*: For PHAs to remove the most recently submitted record from the database.

When should I use Void to remove records from the database?

- Use Void to delete the latest family record when it was submitted in error.
- PHAs should use Void to correct data when there are two or more duplicate records in the PIC database or when the PHA sends an erroneous SSN to PIC.

Example: If a PHA submits a Form HUD-50058 in March and a FSS Addendum to the same Form HUD-50058 in April then subsequently voids the Form HUD-50058 in May, the FSS Addendum will also be voided.

2b. Effective date (mm/dd/yyyy) of action:
Date the reported action becomes effective. The effective date cannot be earlier than the date of admission to the program (line 2h). Enter the date in the mm/dd/yyyy format.

- *New Admission (line 2a = 1)*. The effective date of the lease. For tenant-based voucher units, it is the effective date of the assisted lease and HAP contract.
- *Annual Reexamination (line 2a = 2)*. Date that the reexamination takes effect. It is generally the same month and day each year.
- *Interim Reexamination (line 2a = 3)*. Date that the reexamination takes effect.
- *Portability Move-in (vouchers only) (line 2a = 4)*. The effective date of the lease and HAP contract.
- *Portability Move-out (vouchers only) (line 2a = 5)*. Same date as the portability move-in as noted on the portability billing form.
- *End Participation (line 2a = 6)*. For Public Housing units, it is the date the lease terminates. For voucher famiies, it is the date the HAP contract terminates, or if the family is not in an assisted unit, the date that the voucher expires (whichever is later).
- *Other Change of Unit (line 2a = 7)*. The effective date of the lease for the new unit.
- *FSS/WtW Addendum only (line 2a = 8).* Date the family enrolls or exits the Family Self-Sufficiency (FSS) or Welfare to Work (WtW) program, or the date when the PHA runs a progress report on the family.
- *Annual Reexamination Searching (tenant-based vouchers only) (line 2a = 9)*. The effective date of the annual reexamination for a family that is searching for a unit.
- *Issuance of Voucher (vouchers only) (line 2a = 10)*. Date the PHA issues a voucher to the family (whether new to the program or currently assisted).
- *Expiration of Voucher (vouchers only) (line 2a = 11)*. Date the issued Voucher, including any term extensions, expires.
- *Flat Rent Annual Update (Public Housing only) (line 2a = 12)*. Date of the flat rent annual update. Use this to record the date of the yearly update, not the 3 year reexamination. It is generally the same month and day each year.
- *Annual HQS Inspection Only (Housing Choice Vouchers and Moderate Rehabilitationonly) (line 2a = 13)*. Date the annual HQS inspection was performed.
- *Historical Adjustment (line 2a = 14)*. Date that the historical adjustment takes effect.
- *Void (line 2a = 15)*. Date the PHA chooses to void the record.

2c. Correction? (Y or N):
Allows PHAs to correct fields previously transmitted in error on the last submitted Form HUD-50058. Use a correction for a change to the last submitted Form HUD-50058. If the majority of the last submitted form is erroneous, use line 2a = 15, i.e. Void action type.

2d. If correction (check primary reason):
Indicate the primary reason for the correction record. Requires PHAs to indicate the reason for a correction.

- *Family correction of income*: A family corrected its inaccurate income information.
- *Family correction (non-income)*: A family corrected its inaccurate non-income information.
- *PHA correction of income*: The PHA corrected its errors in determining or reporting a family's income or rent.
- *PHA correction (non-income)*: The PHA corrected its inaccurate reporting of a family's non-income information.

2h. Date (mm/dd/yyyy) of admission to program:
Date the PHA initially admitted the family into the program reported in line 1c. HUD uses this date to determine how long families participate in specific housing programs. Enter the date in the mm/dd/yyyy format. See below for the applicable dates for different scenarios.

- For new admissions, enter the Effective Date of Action from line 2b.
- If the family was converted from the Certificate to the Voucher program but the PHA continuously assisted the family, enter the date the PHA initially admitted the family to the rental Certificate program.
- The Date of Admission for voucher program is the effective date of the first assisted lease and HAP contract for the tenant. The date the tenant signed the lease may or may not be the effective date.

2i. Projected effective date (mm/dd/yyyy) of next reexamination:

Scheduled date for the next reexamination. Enter the date in the mm/dd/yyyy format. Enter a projected reexamination date if type of action (line 2a) is:

- 1 = New Admission
- 2 = Annual Reexamination
- 3 = Interim Reexamination
- 4 = Portability Move-in
- 7 = Other Change of Unit
- 9 = Annual Reexamination Searching
- 12 = Flat Rent Annual Update

When should the reexamination be scheduled?

For most families, the PHA must conduct a reexamination of the family's income and composition once a year. If the family is in the voucher program, moderate rehabilitation program or Income-based Public Housing, schedule the family's reexamination within12 months from the effective date of action of the family's last reexamination or new admission. If the family is in Public Housing and chooses flat rent, the PHA must schedule the reexamination within three years from the effective date of action of the family's last reexamination or new admission.

How often should reexaminations be scheduled for families who choose flat rent for Public Housing?

Reexaminations of income and rent for families who choose flat rent do not have to be conducted on a yearly basis. The PHA has the option to conduct reexaminations only once every three years for families with flat rent. In the 'off' years, the PHA must still collect information on the family's composition through a Flat Rent Annual Update (2a=12).

Example: Public Housing family chooses flat rent.
Year 1: New admission (2a=1) or Annual Reexamination (2a=2)
Year 2: Flat Rent Annual Update (2a=12)
Year 3: Flat Rent Annual Update (2a=12)
Year 4: Annual Reexamination (2a=2)

2j. Projected date (mm/dd/yyyy) of next flat rent annual update (Public Housing flat rent only):

The flat rent annual update is the annual update of family composition data for families who choose flat rent. The flat rent annual update is only conducted in the years that a reexamination is not conducted. Enter the date in the mm/dd/yyyy format.

When should the flat rent annual update be scheduled?

Schedule the flat rent annual update for no more than 12 months from the Effective Date of Action (line 2b). If the flat rent family is due for their reexamination in 12 months, leave this line blank.

2k. FSS participation now or in the last year? (Y or N):

Indicate if the family currently participates or participated in the Family Self-Sufficiency program in the past year. Complete and submit the FSS/WtW Addendum if the family currently participates in the FSS program.

What do I enter if the family ended FSS, but my agency did not complete an FSS exit report?

If the family ended the FSS program and the PHA did not complete the FSS Exit form, indicate Y and complete the FSS Exit form at this time.

What PHA completes the FSS/WtW Addendum if the family ported-in to my PHA?

When a FSS participant moves under portability, the receiving PHA must complete and submit the FSS Addendum. The receiving PHA must obtain the information, as necessary, from the initial PHA.

2m. Special program (vouchers only) (check only one):

Indicate if the family has Enhanced Voucher assistance or a Welfare to Work Voucher.

When do families receive Enhanced Vouchers?

Enhanced Voucher assistance may be provided to families who stay at multifamily projects where the project meets one of these criteria:

- the owner opted out of, or did not renew, a covered HUD subsidy contract,
- the owner prepaid a mortgage or voluntarily terminated a mortgage insurance contract on a preservation project, or
- In rare cases where HUD terminated or did not

permit an owner to renew a Section 8 multifamily project contract. See Notice PIH 2000-9 for detailed guidance.

Who is a Welfare to Work family?
A Welfare to Work (WtW) family is a family that is assisted by a PHA with Voucher funding awarded to the PHA under the HUD Welfare-to-Work Voucher program (including any renewal of such WtW funding for the same purpose).

2n. Other special programs:
Indicate if the family participates in one or more of the following programs:

Housing Choice Voucher programs:
- **FUP** (Family Unification Program)
- **PHRR** (Public Housing Relocation/Replacement)
- **MS1** (Mainstream -1 year)
- **MS5** (Mainstream – 5 year)
- **PHDES** (Designated Public Housing)
- **MFDES** (Designated Multifamily Projects/ Certain Projects)
- **PA** (Project Access)
- **LIT** (Litigation)

Public Housing programs:
- **ROSS** (Resident Opportunities & Self Sufficiency program)
- **HOPE** (Homeownership and Opportunity for People Everywhere VI Resident Service Program)

2q, 2r, 2s, 2t, 2u. PHA use only:
PHAs may use these lines for any information they wish to collect. HUD encourages PHAs to use lines 2q-2u for local initiatives. The information on these lines is transmitted to HUD so PHAs may later retrieve the information from PIC.

Example: PHAs may use 2q through 2u to capture Mailbox sub-ID numbers, PHA subcontractor codes or PHA tenant identification codes.

Section 3: Household

General Rules:

- Apply the instructions for lines 3a through 3q to page 3 of the form.
- The household includes everyone who lives in the unit. Household members are used to determine unit size.
- The family includes all household members except live-in aides and foster children and adults. Use the number and characteristics of family members to calculate housing subsidies and payments.

3a. Head of household/ Member number 01:

The Member Number identifies the individual listed on that line of the form. You must list Member Number 01 as the Head of the Household. List Member Number 02 as the spouse or co-head (see relation codes, line 3h, for co-head definition). If there is no spouse or co-head, list other household members beginning with Member Number 02 and continue in sequence until the form contains information about everyone who comprises the household.

3b. Last name & Sr., Jr., etc.:

Indicate the last name of each household member. Include name suffixes, such as Jr., and separate with a comma. Do not include name prefixes, such as Ms. or Mr.

Example: Smith, Jr. or Doe, III.

3c. First name:

Indicate the first name of each household member. Do not include name prefixes, such as Ms. or Mr.

3d. MI:

Indicate the middle initial of each household member. If the household member does not have a middle initial, leave blank. If he/she has more than one middle initial, only enter one.

3e. Date of birth:

Indicate the date of birth for each household member. Include all four digits of the year. Enter the date in the mm/dd/yyyy format.

Example: Write 11/15/1997 instead of 11/15/97.

3f. Age on effective date of action:

Indicate the age in years of each household member on the effective date of action (line 2b). Use whole years only. Do not round.

Example: The effective date of action listed is 12/01/2000. Household Member Number 03 was born on August 8, 1981. This person's age as of 12/01/2000 is 19 years.

3g. Sex:

Indicate the gender of each household member. Use M = Male and F = Female.

3h. Relation:

Use the code that best categorizes the position or role of each household member.

- H = Head of household
- S = Spouse
- K = Co-head
- F = Foster child/adult
- Y = Other youth under 18
- E = Full-time student 18+
- L = Live-in aide
- A = Other adult

How are each of the codes defined?

- *H = Head of household:* The one adult member of the household, designated by the family or by PHA policy as the head of household, who is wholly or partly responsible for rent payment.

- *S = Spouse:* The marriage partner of the head of household.

- *K = Co-head:* An individual in the household who is equally responsible for the lease with the head of household. Indicate either a spouse or a co-head, but not both. A co-head never qualifies as a dependent. However, a co-head may be under 18 years old if declared an "emancipated minor", as many states will allow an emancipated minor to sign a lease.

- *F = Foster child/adult:*
  - *Foster child* – A member of the household who is under 18 years of age or a member who is a full-time student, 18 years or older, and who is under the parental control and responsibility of someone other than his or her mother or father.
  - *Foster adult* – A member of the household

(usually a person with a disability, unrelated to the tenant family, who is unable to live alone) who is 18 years of age or older and for whom the family provides necessary shelter, care and protection.

- *Y = Other youth under 18*: A member of the household (regardless of disability status), who is under 18 years of age on the effective date of action (line 2b), and is not a foster child.

- *E = Full-time student 18+*: A member of the household, other than the Head, spouse or co-head, or foster child or adult, 18 years of age or older on the effective date of action (line 2b) who carries a subject load considered full-time for students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as a degree-granting institution.

- *L = Live-in aide*: A person who lives with an elderly or disabled person(s) and who**:**
  - is determined by the PHA to be essential to the care and well-being of the person(s);
  - is not obligated to support the person(s);
  - would not be living in the unit except to provide necessary supportive services.

  How do I categorize a child of a Live-in aide?
  Categorize the child(ren) of a Live-in aide as a Live-in aide.

- *A = Other adult:* A member of the household (excludes foster adults), other than the head or spouse or co-head, who is 18 years of age or older on the effective date of action (line 2b), regardless of disability status.

3i. Citizenship:

Use code that indicates each family member's United States citizenship status.

- EC = Eligible citizen: The family member is an eligible U.S. citizen or national.
- EN = Eligible noncitizen: The family member has an alien registration number verified by the USCIS.
- IN = Ineligible noncitizen: The family member fits one or more of the following descriptions:
  - the person is unable to verify registration at USCIS,·
  - the person has not yet provided documentation of eligible status, or
  - the person elected not to contest eligibility status.
- PV = Pending verification: The family member has an alien registration that is pending verification by the USCIS. If you do not know an individual's citizenship, enter 'PV'.

- Leave blank if the household member is a live-in aide or foster child/adult.

  What is the citizenship status used for?
  Each family member's code will factor into the rent calculations for housing assistance eligibility.

3j. Disability (Y/N):

Indicate whether or not the household member has a disability as defined below.

What conditions classify a person as disabled?
A person with disabilities has one or more of the following:

- A disability as defined in section 223 of the Social Security Act.
- A physical, mental, or emotional impairment, which is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions.
- A developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.
- Acquired immune deficiency syndrome (AIDS) or any condition that arises from the etiologic agent for AIDS.

3k. Race:

Use the code or codes the family says best indicates each household member's race. These codes are the official codes the Federal Government uses for census-taking and related activities and are mandated by the U.S. Office of Management and Budget (OMB). Select as many codes as appropriate. More than one race code can be entered for each household member.

1 = White
2 = Black/African American
3 = American Indian/Alaskan Native
4 = Asian
5 = Native Hawaiian/Other Pacific Islander

3m. Ethnicity:

Use the code the family says best indicates each

household member's ethnicity.

1 = Hispanic or Latino
2 = Not Hispanic or Latino

3n. Social Security Number:

Enter the 9-digit Social Security Number (SSN) issued to each household member by the Social Security Administration (SSA).

Whose SSN needs to be reported?
The family must report all SSNs of family members who are age six and over. If, for some reason, a family member has more than one SSN, record the number the individual currently uses.

What do I enter if a family member does not have a SNN?
If a Head of Household does not have a SSN, PHA must generate an alternate identification number for the family head. PHA must access the Alternate ID Generator Module in PIC to generate this number. If a member who is not the Head does not have a SSN, enter 999999999.

What do I enter if an individual receives social security benefits under a SSN other than his or her own?
Regardless of whether, an individual receives social security benefits under a SSN other than his or her own, enter the recipient individual's SSN in line 3n. Do not enter a SSN that has one or two alpha or numeric characters that follow the basic 9-digit number. The presence of the suffix indicates that the number is actually a claim number – issued by the Social Security Administration to identify the relationship of the recipient to the person from whom the benefit is derived (i.e., the basis of the recipient's benefit is another person's social security record).

Example: Do not record xxx-xx-xxxxB or xxx-xx-xxxxW1 as an individual's valid SSN. A number in this format is actually a claim number.

3p. Alien Registration Number:

Enter the Alien Registration Number or A-number issued to each noncitizen household member, if applicable. Each alien registration number is unique in that it pertains to one person or one document only; in many instances, the USCIS provides minors and infants in the United States with individual alien numbers. The A-number contains seven, eight or nine numerical digits preceded by the letter A, e.g., A72 735 827.
How do I format the A-number?

- Do not enter the letter A in any case.
- Enter the digits from left to right.
- If the alien registration number has seven digits, enter two zeros before the alien registration number.
- If the alien registration number has eight digits, enter one zero before the alien registration number.
- If the alien registration number is nine digits, enter the number without a leading zero.

Example:

- If the Alien Registration Number is A1234567, enter as 001234567.
- If the Alien Registration Number is A12345678, enter as 012345678.
- If the Alien Registration Number is A123456789, enter as 123456789.

3q. Meeting community service or self-sufficiency requirement? (Public Housing only):

Indicate whether the family member is in the process of meeting his or her prior year community service or selfsufficiency requirements under the FY 2003 HUD/VA Appropriations Act that reinstated the provisions authorized in Section 12 of the United States Housing Act of 1937, as amended by PHRA. Regulations for this provision are provided in 24 CFR 960 (Subpart F). Further guidance is available in Notice PIH 2003-17.

Select one of the options:

- 1 = yes; the tenant is meeting his or her 8 hour monthly service requirement
- 2 = no; the tenant is not meeting his or her 8 hour monthly service requirement. If tenant is not satisfying this requirement, his/her lease should be terminated.
- 3 = pending; the PHA needs to verify if the tenant is meeting his or her service or self-sufficiency requirements.
- 4 = exempt; refers to tenants and their primary care givers, including live-in aides, who meet the exemptions listed in 24 CFR 960.601(b). (see question below for exemption criteria)

PHA should no longer be selecting the option "n/a" since the community service requirement is now reinstated for all PHA. After September 2004, PHA will receive a fatal error if the "n/a" option is used.

When do PHAs have to comply with the community service requirement?
By July 31, 2003 all residents should have received written notice of the reinstatement of the community

service requirement. As of October 31, 2003, PHAs must ensure that all affected residents are performing their community service or self-sufficiency requirement.

When does my PHA assess community service compliance?
Satisfaction of the requirement is assessed during the annual reexamination process and the flat rent annual update process. PHAs must review family compliance once a year, 30 days prior to the expiration of the resident's lease.

What can an individual do if they do not meet the community service requirement?
The regulation provides for a make-up period if the eight-hour average is not met.

What are the criteria for satisfying community service requirements under the Public Housing Reform Act (PHRA) and 24 CFR 960.603?
To satisfy service requirements, every adult resident of public housing must do one of the following:

- Contribute an average of eight hours of community service each month,
- Participate in a self-sufficiency program for at least eight hours every month, or
- Perform eight hours of combined activities each month.

What household members are exempt from the community service requirement under 24 CFR 960.601?
Exemption criteria includes the following**:**

- Persons who are 62 years of age or older, and their primary caregivers, including live-in aides.
- Persons under 18 years of age.
- Persons with disabilities, and their primary caregivers, including live-in aides.
- Persons engaged in work activities.
- Persons meeting the requirement for being exempted from engaging in work under a State program funded under Part A, Title IV of the Social Security Act or under any other welfare program of the State in which the PHA is located, including State-administered Welfare to Work (WtW) program.
- Members of a family receiving assistance, benefits or services under a State program funded under Part A, Title IV of the Social Security Act or under any other welfare program of the State in which the PHA is located, including State-administered Welfare to Work (WtW) program.

3t. Total number in household:

The total number of people in the household. Count all persons, include foster children or adults, live-in aides, and other unrelated individuals (who reside with the family as part of the household). Also include persons who are members of the household but temporarily absent from the home.

The total count of household members should equal the number of individuals listed separately in Section 3 (line 3a).

3u. Family subsidy status under Noncitizens Rule:

The code that indicates the housing assistance eligibility for family members based on the 24 CFR Part 5 (e). The Noncitizens Rule allows PHAs to provide financial assistance to U.S. citizens, U.S. nationals, and non-U.S. citizens with eligible immigration status.

Use the following status codes:

- C = Qualified for continuation of full assistance
- E = Eligible for full assistance
- F = Eligible for full assistance pending verification of status
- P = Prorated assistance

What does each code mean?

- *C = Qualified for continuation of full assistance*: Applies to a mixed family, which is composed of both eligible and ineligible members. A mixed family may be qualified for continued assistance if it meets all of the following conditions**:**
  - The family was receiving assistance under a Section 214 covered program on June 19, 1995, which is when the Noncitizens rule became effective.
  - The head of household or the spouse has eligible immigration status. See 24 CFR 5.506.
  - The family does not include any person without eligible immigration status other than the Head of Household, spouse, and parents or children of the Head or spouse.

  A family granted continued assistance before Nov 29, 1996 is entitled to receive non-prorated assistance. A family granted assistance after Nov 29, 1996 must receive prorated assistance (Section 5.518(a)(2)).

- *E = Eligible for full assistance*: Applies when the

entire family provides documentation of U.S. citizenship, U.S. national status, or eligible immigrant status and the USCIS verified this status or documentation.

- *F = Eligible for full assistance pending verification of status*: Applies when the family provides documentation of eligible immigrant status and the PHA is waiting for USCIS verification or the family currently participates in the hearing process in reference to their ineligible noncitizen status. This applies if the PHA did not know the citizenship of any family member, as indicated by 'PV=Pending Verification' in line 3i. This also applies for instances of temporary deferral of termination of assistance.

- *P = Prorated assistance*: This applies if one or more family members do not provide acceptable documentation of their citizenship or eligible immigrant status. The PHA gives an assistance amount based on the percentage of the family that provided acceptable documentation of citizenship or eligible immigrant status. The PHA must establish at least one family member's acceptable degree of eligibility (through documentation) to make assistance available.

When can a family have ineligible members and still receive full assistance?
Mixed families who are qualified for full continuation of assistance (3u=C) or those who choose temporary deferral of termination (3u=F), can still receive full assistance. The aggregate temporary deferral period for deferrals granted prior to November 29, 1996 should not exceed 3 years, and for deferrals provided after November 29, 1996 should not exceed 18 months. The initial deferral is granted for a period of 6 months, and renewed for 6- month periods thereafter.

What is a Termination of Assistance and how long does it last?
If a family member knowingly permits an ineligible individual to reside in an assisted housing unit, the family member's assistance must be terminated for at least 24 months, according to 24 CFR 5.514 (c)(1)(iii).

3v. Eligibility effective date (mm/dd/yyyy) if qualified for continuation of full assistance (3u = C):

Date the family originally qualified for the continuation of full assistance (3u=C).

3w. If new head of household, former head of household's SSN:

If the designated head of household changed due to discontinued occupancy or another cause such as death, marriage, or remarriage and there are family members who remain in the household, enter the former head of household's SSN.

Only enter a SSN in this field if the family changed its head of household. If the former head of household did not possess a Social Security Number, enter the Alternate Identification number that was previously generated for the former head of household in the PIC Alternate ID module.

Section 4: Background at Admission

4a. Date (mm/dd/yyyy) entered waiting list:

Date the PHA placed the family on the waiting list for the program under which they are currently receiving housing assistance. If the PHA admitted the family as a special admission (not on waiting list; 24 CFR 982.203) to the tenant-based voucher program, leave blank. This date must not be later than the Effective Date of Action (line 2b).

What do I enter if the family's application was temporarily inactive?

If the family's application was inactive at some point, enter the date the PHA used to determine the family's position on the waiting list.

4b. ZIP code before admission:

The 5-digit ZIP code where the family lived before admission to an assistance program.

What ZIP code should I enter if the family was homeless prior to admission?

If the family was categorized as "homeless" prior to admission, enter the post office ZIP code for the area or location where the family usually slept immediately prior to admission. If known, enter the full 9-digit ZIP code (ZIP + 4).

4c. Homeless at admission? (Y or N):

Indicate whether or not the family was homeless at the time the PHA admitted the family to a housing assistance program.

4d. Does family qualify for admission over the very low-income limit? (vouchers only) (Y or N):

Indicate whether or not the family qualified for program admission even though their income exceeds the very low-income limit (50% of the area's median income).

What are the criteria for a family to qualify for admission over the very low-income limit?

A family qualifies for admission over the very low-income limit if one or more of the following apply:

- A low-income family that is "continuously assisted" under the 1937 Housing Act.
- A low-income family that meets additional eligibility criteria specified in the PHA administrative plan.
- A low-income non-purchasing family who resides in a HOPE 1 or HOPE 2 project.
- A low-income non-purchasing family who resides in a project subject to a resident homeownership program under 24 CFR 248.173.
- A low-income or moderate-income family displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract under 24 CFR 248.101.

4e. Continuously assisted? (Y or N):

Indicate whether or not the family is continuously assisted under or currently enrolled in any 1937 Housing Act program at the time of admission.

Example: Indicate yes if a family moves from public housing to the Housing Choice Voucher or Moderate Rehabilitation program or if a family moves from a Section 8 subsidized multifamily project to the voucher program.

4f. Is there a HUD approved income targeting disregard? (Y or N):

Applicable to Welfare to Work families only. Indicate whether this Welfare to Work family is approved for an income targeting disregard. (see 24 CFR 982.201(b)(2)(iii))

How does a family qualify for an income targeting disregard?

If approved by HUD, the admission of a portion of very low income welfare-to-work (WTW) families that are not extremely low income families may be disregarded in determining compliance with the PHA's income-targeting obligations under 24 CFR 982.201(b)(2)(i).

HUD will grant such approval only if and to the extent that the PHA has demonstrated to HUD's satisfaction that compliance with such targeting obligations with respect to such portion of WtW families would interfere with the objectives of the Welfare to Work Voucher program. If HUD grants such approval, admission of that portion of WtW families is not counted in the base number of families admitted to a PHA's tenant-based Voucher program during the fiscal year for purposes of income targeting.

Section 5: Unit to be Occupied on Effective Date of Action

5a. Unit address:

The complete address of the housing unit that the household occupies on the effective date of action (line 2b).

What is included in a complete address?

- Number and street: Street address of the unit.
- Apt: Apartment or unit number, if applicable.
- City: City in which the unit is physically located.
- State: State in which the unit is physically located (use 2 character postal codes).
- ZIP code (+4): 5-digit ZIP code in which the unit is physically located (if known, include the full 9-digit ZIP code: ZIP + 4).

5b. Is mailing address same as unit address? (Y or N) (if yes, skip to 5d):

Indicate whether the mailing address is the same as the unit address indicated in line 5a.

5c. Family's mailing address:

The complete address where the family receives mail, if other than the unit address indicated in line 5a. Complete only if the answer to the previous question (5b) is no.

When do I enter a mailing address?

- Use when tenant would like to receive mail at a different address.
- Use when the individual has a "guardian" that handles correspondence.
- Use when the family receives mail at a Post Office box.

When do I leave the field blank?

Leave this field blank if the mailing address is the same as the unit address.

What is included in a complete address?

- Number, street, or PO box - Street address or post office box number where the family receives mail
- Apt. - Apartment or unit number, if applicable, where the family receives mail
- City - City where the family receives mail
- State - State where the family receives mail (use two character postal code)
- ZIP code (+ 4) - 5-digit ZIP code where the family receives mail (if known, include the full 9-digit ZIP code: ZIP + 4)

5d. Number of bedrooms in unit:

Total number of bedrooms in the unit that the household will occupy on the effective date of action (line 2b).

What number do I enter if the unit is an efficiency or Single Room Occupancy (SRO)?

If the unit is an efficiency or Single Room Occupancy (SRO), enter 0 (zero) in this field.

What number do I enter if two or more families share the unit?

If two or more families share the unit (i.e., shared housing unit) under the voucher program, enter the number of bedrooms in the family's private living space.

5e. Has the PHA identified this unit as an accessible unit? (Public Housing only) (Y or N):

Indicate whether or not the unit that the family occupies on the effective date of action (line 2b) is a PHA designated handicapped accessible unit.

5f. Has the family requested accessibility features? (Public Housing only) (Y or N) (If no, skip to next section):

Indicate whether or not the family requested disability amenities or accessibility features.

If you answered no, skip to Section 6.

5g. Has the family received the requested accessibility features? (Public Housing only):

Indicate the status of the family's request for disability amenities and/or accessibility features (line 5f) on the effective date of action (line 2b).

- a = Yes, fully: the PHA fulfilled the request fully.

  Example: If the household requested a unit with disability amenities and on the effective date of action, the PHA had fulfilled the request fully, mark the status as a = Yes, fully.

- b = Yes, partially: the PHA fulfilled the request partially.
  Example: If the household requested a unit with disability amenities and on the effective date of action, the PHA fulfilled the request partially,

mark the status as b = Yes, partially.

- c = No, not at all: the PHA did not fulfill the request in any way.

  Example: If the household requested a unit with disability amenities but on the effective date of action, the household did not receive any amenities, mark the status as c = No, not at all.

- d = Action pending: the request is currently pending (can be checked in combination with b or c).

  Example: If the household requested a unit with disability amenities and on the effective date of action, the household did not receive any amenities, but the unit is scheduled to receive an upgrade in the next month, mark the status as d = Action pending.

5h. Date (mm/dd/yyyy) unit last passed HQS inspection (All Voucher-Funded Assistance and Moderate Rehabilitation units only, except Homeownership and Project-based Vouchers):

The last date the unit passed a full housing quality standards (HQS) inspection. Enter the date in the mm/dd/yyyy format.

Is this date always the same as the last annual HQS inspection recorded in 5i?

No, this date may or may not be the same date as the last annual HQS Inspection, depending on whether or not the unit passed the HQS inspection.

5i. Date (mm/dd/yyyy) of last annual HQS inspection (All Voucher-Funded Assistance and Moderate Rehabilitation only, except Homeownership and Project-based Vouchers):

The last date a PHA inspector performed a full annual HQS inspection of the unit that the household occupies. Enter the date in the mm/dd/yyyy format.

Can this date be different from the date the unit last passed HQS inspection (line 5h)?

This date may be different from the date reported in 5h if the unit failed the last HQS inspection.

Example 1: The unit failed the initial full HQS inspection on 2/20/2001. When the unit was re-inspected on 3/15/2001, it passed. In this situation:
Line 5h = 3/15/2001
Line 5i = 2/20/2001

The date of the last annual HQS inspection (5i) is the date the inspector conducted a full inspection of the unit. When the inspector returns to re-inspect for the correction of a failed item, he/she is not re-inspecting the entire unit, thus not doing a full HQS inspection.

Example 2: The unit passed inspection on 3/15/2001. However, the unit failed the next full annual HQS inspection on 2/20/2002. In this situation:
Line 5h = 3/15/2001
Line 5i = 2/20/2002

5j. Year (yyyy) unit was built (All Voucher-Funded Assistance and Moderate Rehabiliation only):

Indicate the year that the unit was built. This date can be found on the request for tenancy approval form. If the owner does not know the exact year the unit was built, enter the owner's best estimate of the year the unit was built. Enter the year in the yyyy format.

5k. Structure Type (check only one) (All Voucher Funded Assistance and Moderate Rehabilitation only):

Indicate the building structure type.

- *Single family detached* includes building structures that house only one family under one roof.
- *Semi-detached* includes units in duplexes and two-family homes.
- *Low-rise* includes multifamily apartment buildings of five or more units and up to four stories. Also include five or six story buildings without an elevator as low-rise structures.
- *High-rise with elevator* includes buildings of five stories or more with elevators.
- *Rowhouse/townhouse* includes structures with three or more units side-by-side and under one roof.
- *Manufactured home* includes mobile homes.

Section 6: Assets

General Rules:

- Do not include assets for live-in aides or foster children or foster adults.
- Use a separate line for each family member and asset source.
- Report each asset source on lines 6a through 6e. Enter line information for each family member from *left to right*.

6a. Family member name / No.:

The name of each family member in the household that has assets and their Member number (line(s) 3a) that corresponds to the asset information reported.

6b. Type of asset:

List any asset that has a dollar value or provides a source of income to the person listed in column 6a.

What items are considered assets?

Assets include, but are not limited to:

- savings account,
- stocks,
- bonds,
- other forms of capital investment, and
- real property (land owned or bequeathed).

What items are not considered assets?

Assets do not include:

- Interests in Indian trust land
- Equity accounts in HUD homeownership programs
- Necessary items of personal property, such as furniture and automobiles
- Trust funds, in cases where the trust is not revocable by, or under the control of, any member of the family or household

6d. Cash value of asset:

The estimated, known or calculated dollar value of each asset listed. Cash value of an asset can be estimated by a formal assessment; or the actual dollar value may be known (for example, the amount of money in a savings account).

How do I determine an asset's value?

In order to calculate the dollar value of the listed asset, subtract the cost to sell the asset from the asset's value (i.e., the asset value minus the cost to sell it).

Do I include assets that have been sold?

Include the value of any business or family asset that an applicant or tenant disposes of, for less than fair market value (include a disposition in trust, but not a foreclosure or bankruptcy sale) during the 2 years that precede the effective date of action (line 2b).

6e. Anticipated income:

Total amount of income the family member expects to receive in the next 12-month period from the asset listed.

6f. Column total:

Total of the values listed in column 6d.

6g. Column total:

Total of the values listed in column 6e.

6h. Passbook rate (written as decimal):

Enter the passbook rate as a decimal.

What is a Passbook rate?

The Passbook rate is the interest rate used to determine the imputed (estimated) income of an asset(s) that would not otherwise be readily determinable. It usually falls between 2% (0.02) and 3% (0.03).

Example: After analyzing several banks in a project locality, HUD determined that the average rate of interest on local Passbook Savings Accounts is 3% (0.03). For a family member who listed her farm as an asset, the Passbook Rate should be applied to calculate the imputed (estimated) income that results over time from the use or sale of the farm.

How does HUD determine the Passbook rate?

The HUD field office determines the Passbook rate of interest for the project locality based on the average interest rate received on Passbook Savings Accounts at several banks in the local area.

6i. Imputed asset income: 6f x 6h (if 6f is $5,000 or less, put 0):

Imputed income from assets based on the total dollar value of the asset listed and the Passbook rate of interest.

How do I calculate imputed asset income?

Multiply the total cash value of the listed asset (line 6f) by the Passbook Rate of interest (line 6h). Use the imputed income on the total of all assets.

Example: A family lists its total assets as $5,500. To calculate the imputed income from this asset multiply $5,500 by 0.03 (assume 3% is the HUD-determined local Passbook Interest rate). This results in an imputed asset income of $165.

6j. Final asset income: larger of 6g or 6i:
The total amount of household income derived from assets. Indicate the larger amount of the total anticipated income from assets (column total 6g) or imputed asset income (line 6i).

Section 7: Income

General Rules:

- Do not include income for live-in aides or foster children or foster adults.
- Use a separate line for each family member and income source.
- Use the columns in section 7 to report each income source that contributes to the family's income. Enter line information for each family member from left to right.
- If the family members do not have any income from sources other than assets and do not expect any other income in the next 12-month period, leave the income section blank (except for total annual income (line 7i), which is the total of the asset income).
- Do not double count asset income as another income type in this section.
- Do not consider income exclusions in the determination of eligibility for housing assistance. Consider income deductions in the determination of eligibility for housing assistance.
- The Code of Federal Regulations (CFR) lists the income items to exclude as "income" for the various Public Housing and Section 8 housing programs. Please see 24 CFR 5.609(c) for further guidance.
- PHAs are required to report all sources of income and all sources of exclusion amounts.

7a. Family member name/No.:

The name and member number (line(s) 3a) of each family member in the household that corresponds to the income information reported.

7b. Income code:

Use the one or two letter code that represents the type of income for a family member. Please refer to the Income and Exclusions chart when completing Income code (line 7b) and Income exclusions (line 7e).

Income and Exclusions Chart			
Income code	**Description**	**Include**	**Income Exclusions**
WAGES			
(B) Own business	Net income from a professional or business operation (24 CFR 5.609 (b)(2)).	· Withdrawals of cash or assets from the professional or business operation (24 CFR 5.609(b)(2)). · Expenditures for business expansion (24 CFR 5.609 (b)(2)). · Amortization of capital indebtedness as deductions in determining net income (24 CFR 5.609 (b)(2)).	· Withdrawals of cash or assets from the professional or business operation if the withdrawal is a reimbursement for cash or assets invested in the operation by the family (24 CFR 5.609(b)(2)). · Allowance for asset depreciation, based on straight line depreciation, as provided in Internal Revenue Service (IRS) regulations (24 CFR 5.609(b)(2)).
(F) Federal wage	Compensation received from federal government employment, which includes federal government agencies and instrumentalities.	· Wages from federal government employment	· Income from employment of children or foster children under 18 years old (24 CFR 5.609(c)(1)). · Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse) (24 CFR 5.609(c)(11)).· · Earned income disallowance for public housing families (24 CFR 960.255(b)) and persons with disabilities in public housing, vouchers, , and other HUD assisted housing (24 CFR 5.617). · Amounts earned by temporary Census employees; terms of employment may not exceed 180 days for the purposes of the exclusion (Notice PIH 2000-1).
(HA) PHA wage	Compensation earned through work performed for the Public Housing Agency (PHA).	· Wages paid to family member from the PHA	· Income from employment of children or foster children under 18 years old (24 CFR 5.609(c)(1)). · Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by the resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. (24 CFR 5.609(c)(8)(iv)). · Stipends to reimburse residents for expenses for serving as members of the PHA governing board or commission (24 CFR 5.609(c)(8)(iv)). · Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse) (24 CFR 5.609(c)(11)).· · Earned income disallowance for certain public housing families (24 CFR 960.255(b)) and persons with disabilities in Housing Choice Vouchers, and other HUD assisted housing (24 CFR 5.617).

Income and Exclusions Chart			
Income code	**Description**	**Include**	**Income Exclusions**
WAGES			
(M) Military Pay	All regular pay, special pay and allowances of a member of the Armed Forces (including the Coast Guard, National Guard, and Reserve units).	· The full amount of the head of household's or spouse's military pay, not just the amount sent home, regardless of whether the head of household or spouse or co-head is on the lease. · Subsistence allowances. · Uniform allowances. · Other allowances. *see 24 CFR 5.609(b)(8)*	· Income from employment of children or foster children under 18 years old (24 CFR 5.609(c)(1)). · The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (24 CFR 5.609(c)(7)). · Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse) (24 CFR 5.609(c)(11)).· · Earned income disallowance for public housing families (24 CFR 960.255(b)) and persons with disabilities in public housing, vouchers, and other HUD assisted housing (24 CFR 5.617). · The full amount of military pay of any family member other than the head and spouse. If other family members are away from home in the military, the PHA may remove their name from the lease and exclude their income. · Other pay specifically excluded by law (e.g., Desert storm active duty).

Income and Exclusions Chart			
Income code	**Description**	**Include**	**Income Exclusions**
WAGES			
(W) Other wage	Wages and salary received from private or public sources (other than military pay and federal wages). Also include income in lieu of earnings in this category.	· Overtime pay · Commissions · Fees · Tips · Bonuses · Other compensation for personal services · Workers' compensation · Severance pay · Termination pay (24 CFR 5.609(b)(1))	· Income from employment of children or foster children under 18 years old (24 CFR 5.609(c)(1)). · Income of a live-in aide, as defined in 24 CFR 5.403 (24 CFR 5.609(c)(5)). · Earnings and benefits from employment training programs funded by HUD (24 CFR 5.609(c)(8)(i)). · Reimbursement for out-of-pocket expenses while attending a public assisted training program (24 CFR 5.609(c)(8)(iii)). · Incremental earnings and benefits from participation in qualifying state and local employment programs (24 CFR 5.609(c)(8)(v)). · Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse) (24 CFR 5.609(c)(11)). · Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 USC 5044(g), 5088, 24 CFR 5.609(c)(17)). · Payments received under programs funded in whole or in part under the Workforce Investment Act (WIA) of 1998 (formerly known as the Job Training Partnership Act (JTPA)) (29 USC 1552(b), 24 CFR 5.609(c)(17)). · Earnings and benefits to any family member from an employment training and supportive services program (Family Support Act of 1988, Section 22 of the 1937 Act (42 U.S.C. 1437t), or any comparable federal, state, or local law) during the exclusion period. The exclusion is applicable only if the family was admitted to the program prior to October 1, 1999 *(Public Housing only)*. · Earned income disallowance for public housing families (24 CFR 960.255(b)) and persons with disabilities in public housing, vouchers, and other HUD assisted housing (24 CFR 5.617).

Income and Exclusions Chart			
Income code	**Description**	**Include**	**Income Exclusions**
		WELFARE	
(G) General assistance	Payments made under a financial or medical assistance program(s) provided by a state, tribe, or local government jurisdiction.	· Payments provided by a state, tribe or local government for medical or financial assistance	· Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home (24 CFR 5.609(c)(16)) · The value of food stamps provided to an eligible household under the Food Stamp Act of 1977 (7 USC 2017(h), 24 CFR 5.609(c)(17)). · Incremental earnings and benefits from participation in qualifying state and local employment training programs (24 CFR 5.609(c)(8)(v)).
(IW) Annual Imputed Welfare Income	The annual income not received by a family because of a welfare benefit reduction, but is included in the family's annual income for determining rent.	· The dollar amount by which the family's welfare benefits were reduced by a TANF agency because of fraud or noncompliance (24 CFR 5.615).	· The amount by which the family's welfare benefits were reduced, if the family was not an assisted resident at the time of sanction (24 CFR 5.615(c)(5)).
(T) TANF assistance	Temporary Assistance to Needy Families (TANF) is benefits designed to meet a family's ongoing basic needs. Not all states refer to this income as TANF. A state may have a different name (other than TANF) for this type of income. See 45 CFR 260.31 for additional information on TANF assistance and exclusions.	· TANF assistance funded from federal or state dollars. The term assistance includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses) (24 CFR 5.609(b)(6)). · Payments to individ-ual recipients by a TANF agency, or other agency on its behalf. · Benefits based on participation in work experience or community service (or any other work activity in 45 CFR 261.30). · Supportive services such as transportation and child care provided to families who are *not* employed.	· Nonrecurrent, short-term benefits that**:** * Are designed to deal with a specific crisis situation or episode of need; * Are not intended to meet recurrent or ongoing needs; and * Will not extend beyond four months. · Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training). · Supportive services such as child care and transportation provided to families who are employed. · Refundable earned income tax credits. · Individual Development Accounts. · Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support. · Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Social Security Act, to an individual who is not otherwise receiving assistance. (24 CFR 984.103)

INCOME AND EXCLUSIONS			
Income Code	**Description**	**Include**	**Income Exclusions**
SS/SSI/PENSIONS			
(P) Pension	A periodic distribution paid for retirement benefits.	· Pensions. · Annuities. · Retirement or profit-sharing plans. · Individual Retirement Accounts (IRAS). · Simplified Employee Pensions (SEPS). · Life insurance and endowment policies. 24 CFR 5.609(b)(4)	· Lump-sum benefits payable as a death benefit. (24 CFR 5.609(c)(3))
(S) SSI	The Supplemental Security Income (SSI) program provides cash assistance to family members who have limited income and resources, are 65 or older, blind, or disabled. Family members under 18 can also receive SSI if they have an impairment that prohibits an adult family member from working.	· Periodic amounts received from the SSI program. · State supplements to SSI (24 CFR 5.609(b)(4)).	· Deferred periodic amounts from SSI benefits that the family member received in a lump sum amount or in prospective monthly amounts (24 CFR 5.609(c)(14)). · Amounts received by a person with a disability that are disregarded for a limited time for purposes of SSI eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) (24 CFR 5.609(c)(8)(ii)).
(SS) Social Security	Benefits from the Social Security Administration.	· Child's benefits. · Disabled workers' benefits. · Disabled widow(er)'s benefits. · Divorced wife's insurance benefits. · A widow(er) entitled to mother's or father's insurance benefits. · Parent's, brother's, or sister's benefits. · Retirement insurance benefits. · Spouse's benefits. · Surviving divorced spouse's benefits. · Widow(er)'s benefits. · Spouse's benefits. · Comparable benefits under the Railroad Retirement Act. (24 CFR 5.609(b)(4))	· Deferred periodic amounts from Social Security benefits that the family member received in a lump sum amount or in prospective monthly amounts (24 CFR 5.609(c)(14)).

INCOME AND EXCLUSIONS			
Income Code	**Description**	**Include**	**Income Exclusions**
OTHER INCOME SOURCES			
(C) Child support	Financial or medical assistance that a parent provides voluntarily or by court order for upkeep and general well-being of his or her child(ren).	· Payments from a parent for child rearing · Regular contributions toward support from a public or private welfare agency (24 CFR 5.609(b)(7))	· Child care arranged or provided under the Child Care and Development Block Grant Act of 1990 (42 USC 9858(q), 24 CFR 5.609(c)(17)).
(E) Medical reimbursement	Any income received to reimburse medical expenses.		· Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member (24 CFR 5.609(c)(4)).
(I) Indian trust/per capita	Judgment funds awarded by the Indian Claims Commission, the Court of Claims, or funds held in trust for an Indian tribe by the Secretary of the Interior.	· Amounts over the first $2,000 of per capita shares received from judgment funds	· Payments received under the Alaska Native Claims Settlement Act (43 USC 1626(a), 24 CFR 5.609(c)(17)). · Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 USC 459(e), 24 CFR 5.609(c)(17)). · Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 State 2503-04, 24 CFR 5.609(c)(17)). · The first $2,000 of per capita shares from judgement funds awarded by Indian Claims Commission or the Court of Claims (25 USC 1407-08) or from funds held in trust for an Indian Tribe by the Secretary of Interior (25 USC 117(b), 1407) (24 CFR 5.609(c)(17)). · Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 94 Stat. 1785, 24 CFR 5.609(c)(17)). · Payments received by the Indian Claims Commission to the Confederate Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (66 Federal Register 4669, April 20, 2001). · The first $2,000 of income received by individual Indians derived from interests or trust or restricted land (66 Federal Register 4669, April 20, 2001).

INCOME AND EXCLUSIONS			
Income Code	**Description**	**Include**	**Income Exclusions**
OTHER INCOME SOURCES			
(N) Other non-wage sources	Any other income source not otherwise specified.		· Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) (24 CFR 5.609(c)(2)). · Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (24 CFR 5.609(c)(3)). · Full amount of student financial assistance paid directly to the student or to the educational institution (24 CFR 5.609(c)(6)). · Temporary, nonrecurring or sporadic income (including gifts) (24 CFR 5.609(c)(9)). · Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era (24 CFR 5.609(c)(10). · Adoption assistance payments in excess of $480 per adopted child (24 CFR 5.609(c)(12)). · Refunds or rebates under state or local law for property taxes paid on dwelling unit (24 CFR 5.609(c)(15)). · Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply (24 CFR 5.609(c)(17).

INCOME AND EXCLUSIONS			
Income Code	**Description**	**Include**	**Income Exclusions**
OTHER INCOME SOURCES			
(N) Other non-wage sources (cont'd)			· Payments or allowances under DHHS' low-income home energy assistance program (LIHEAP) (42 USC 8624(f), 24 CFR 5.609(c)(17)). · Federal scholarsips funded under Title IV of The Higher Education Act of 1965, including awards under the Federal work study program or under the Bureau of Indian Affairs student assistance program (20 USC 1087(uu), 24 CFR 5.609(c)(17)). · Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 USC 3056(f), 24 CFR 5.609(c)(17)). · Payments received on or after January 1, 1989 from the Agent Orange Settlement Fund or any fund established pursuant to the settlement in the Agent Orange product liability litigation (24 CFR 5.609(c)(17)). · Earned Income Tax Credit refund tax payments (26 U.S.C. 32(j), 24 CFR 5.609(c)(17)). · Any allowance paid under provisions of 38 U.S.C. 1805 to a child suffering from spina bidifa who is a child of a Vietnam Veteran (66 Federal Register 4669, April 20, 2001). · Any amount of crime victim compensation that the applicant (under the Victims Crime Act) receives through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims Crime Act because of the commission of a crime against the applicant (66 Federal Register 4669, April 20, 2001).
(U) Unemployment benefits	Periodic payments in lieu of earnings.	· Payments in place of earnings, such as unemployment compensation (except as provided in paragraph 24 CFR 5.609(c)(3)). *see 24 CFR 5.609(b)(5)*	

7d. Dollars per year:
The yearly income amount the family member receives from the income source(s) listed.

Please refer to the Income and Exclusions chart, for guidance on:
- what income to include, and
- how to match income to the correct income code.

7e. Income exclusions:
Income excluded from annual income calculations. Amounts of money that are prohibited from being included in a family's income for rent determination purposes. Income exclusions are described in 24 CFR Subtitle F, § 5.609.

Please refer to the Income and Exclusions chart, given above, for guidance on:
- what income to exclude, and
- how to match exclusions to the correct income code.

7f. Income after exclusions (7d minus 7e):
The family's total annual income minus any exclusions. Deduct income exclusions (line 7e) from dollars per year (line 7d).

7g. Column Total:
The total of the dollar amounts listed in column 7f (Income after exclusions).

7h. Reserved:
Reserved for future HUD use. HUD may have future directions about how to use this line. It is a placeholder for possible future changes.

7i. Total annual income: 6j + 7g:
The family's total annual income. Add the final asset income (line 6j) and the total income after income exclusions (line 7g).

What amounts are included in total annual income?
Total annual income means all amounts, monetary or not, which:
- Go to, or are on behalf of, the family head or spouse (even if temporarily absent) or any other family member; or
- Are anticipated to be received from a source outside the family during the 12-month period following admission, interim reexamination, or annual reexamination effective date; and
- Are derived from assets (during the 12 month period) to which any family member has access; and
- Are not specifically excluded.

Section 8: Expected Income Per Year

8a. Total annual income: Copy from 7i:
The total annual family income.

Permissible Deductions (Public Housing only. If Vouchers or Moderate Rehabilitation, skip to 8f or 8q):

Complete if the family resides in public housing and the PHA has established a written policy for permissible deductions.

IMPORTANT: Permissible deductions replace current optional income exclusions for Public Housing participants. PHAs can adopt these deductions provided the amounts are not already deducted from annual income or reimbursed to the family from other sources.

8b. Family member name/No.:
Public Housing only. The name of each family member in the household, and their individual member number as indicated in line(s) 3a that corresponds to the income information reported.

8c. Type of permissible deduction:
Public Housing Only. The type of permissible deduction as determined by the PHA. This line is not transmitted to HUD.

8d. Amount:
Public Housing Only. The amount of the permissible deduction. This line is not transmitted to HUD.

8e. Total permissible deductions:
Public Housing Only. The total of the dollar amounts listed in column 8d (Amount).

What is the maximum amount allowable for total permissible deductions?
Total permissible deductions (column total 8e) must be less than $90,000 per year.

If the head of household and spouse or co-head are under age 62, and there are no family members (plus foster children) with a disability, skip to line 8q. Otherwise, enter all medical and disability expense information for the entire family (plus foster children) in lines 8f through 8p.

8f. Medical/disability threshold: 8a x 0.03:
Amount of unreimbursed medical and disability expenses that the family must pay before the PHA can deduct an allowance for such expenses from their income. Multiply 0.03 by total annual income (line 8a).

Example: The total annual income in line 8a for a family is $7,000, and the standard medical/disability percentage is 3%. The medical/disability threshold for the family will be**:** $7,000 x 0.03 = $210.

8g. Total annual unreimbursed disability assistance expense (if no disability expenses, skip to 8k):
The family's total annual unreimbursed disability expenses.

What are disability assistance expenses?
Disability assistance expenses are reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

If all family members indicated no disability in line 3j or if the family has no disability expenses, skip to line 8k.

8h. Maximum disability allowance: If 8g minus 8f is positive or zero, put amount:
The amount the PHA may potentially deduct for the family's disability expenses. Subtract the medical/ disability threshold (line 8f) from the total annual unreimbursed disability assistance expenses (line 8g). If the calculation results in a positive number or zero, enter the amount.

If negative and head/spouse/co-head is under 62 and not disabled, put 0:
If the calculation results in a negative number and head/spouse/co-head are under 62 and not disabled, enter zero.

If negative and head/spouse/co-head is elderly or disabled, copy from 8g:
If calculation results in a negative number and head/spouse/co-head are elderly or disabled, enter total annual unreimbursed disability assistance expense (line 8g).

8i. Earnings in 7d made possible by disability assistance expense:
Of a family's dollars per year (line 7d), determine the earned amount made possible by the unreimbursed disability expenses the family incurs. This amount may not exceed the total family income after exclusions (column total 7g).

Example: The head of household spends $1,000 to overhaul his van to accommodate his wheelchair. The van allows the head of household to travel to his job, where he earns $10,000. The unreimbursed disability assistance expense makes possible the $10,000 of earnings.

8j. Allowable disability assistance expense: lower of 8h or 8i (if 8g is less than 8f and head/spouse/co-head elderly or disabled, copy from 8h):
The total disability assistance expense amount the family may deduct. Enter the lower of the maximum disability allowance (line 8h) or the earnings made possible by disability assistance expense (line 8i). If the total annual unreimbursed disability assistance expense (line 8g) is less than the medical/disability threshold (line 8f) and the Head, spouse or co-head is elderly (age 62 or over) or disabled, copy the amount from the maximum disability allowance (line 8h).

8k. Total annual unreimbursed medical expenses (if head/spouse/co-head under 62 and not disabled, put 0):
The total amount of the family's medical expenses that another source does not reimburse (e.g., co-payments for medical insurance). If the head, spouse or co-head are under age 62 and not disabled, enter 0 (zero).

8m. Total annual disability assistance and medical expense: 8j + 8k (if no disability expenses, copy from 8k):
The amount of the family's total disability assistance (line 8j) and medical expenses (line 8k). If the family has no disability assistance expenses, enter total annual unreimbursed medical expenses (line 8k).

8n. Medical/disability assistance allowance:
The amount of the family's allowance for medical expenses and disability assistance expenses.

If no disability assistance expenses or if 8g is less than 8f, put 8m minus 8f (if 8m minus 8f is negative, put 0):
If the family has no disability expenses or if total annual unreimbursed disability assistance expense (line 8g) is less than the medical/disability threshold (line 8f), calculate medical/disability assistance allowance (line 8n) as total annual disability assistance/medical expense (line 8m) minus the medical/disability threshold (line 8f). If total annual disability assistance/medical expense (line 8m) minus the medical/disability threshold (line 8f) is negative, enter 0 (zero).

If disability assistance expenses and 8g is greater than or equal to 8f, copy from 8m:
If the family has disability expenses and the total annual unreimbursed disability assistance expense (line 8g) is greater than or equal to the medical/disability threshold (line 8f), enter the total annual disability assistance/medical expenses (line 8m).

8p. Elderly/disability allowance (default = $400):
The family's standard allowance amount if the head of household, spouse or co-head is elderly (age 62 or over), or disabled. The current allowance is $400.

Does the elderly/disability allowance double if both head and spouse or co-head are elderly or disabled?
No, if both the head of household and spouse or co-head are elderly or disabled, the allowance is not doubled. It is still $400, not $800.

8q. Number of dependents (people under 18, or with disability, or full-time student. Do not count head of household, spouse, co-head, foster child/adult or live-in aide):
The total number of dependents who live in the household and are under 18 years of age, have a disability, or are full-time students of any age. Include dependents who are temporarily absent from the home but listed on the lease (i.e., family members).

What household members qualify as dependents?
Include all members of the household with the following relation code (line 3h)

- other youth under 18 (Y),
- full time student 18+ (E), or
- other adult (A) (if disabled).

What household members do not qualify as dependents?
Do not include the head of household (H), spouse (S) or co-head (K), foster children or adults (F), live-in aides (L), and other adults (A) who are not disabled.

8r. Allowance per dependent (default = $480):
Enter the standard allowance amount for each dependent in the household. The current allowance per dependent is $480.

8s. Dependent allowance: 8q x 8r:
The amount of the family's dependent allowance. Multiply the number of dependents (line 8q) in the household by the standard allowance per dependent (line 8r).

8t. Total annual unreimbursed childcare costs:
The household's total yearly unreimbursed childcare expenses. This is the estimated amount a family expects to pay for childcare during the annual income period. The amount deducted may not exceed the amount of income that the employment generates. The amount deducted must also not exceed reasonable childcare charges.

What childcare expenses should I include under annual unreimbursed childcare costs?

- Only include childcare expense for children under the age of 13.
- Only include child care expenses that are necessary for a family member to be gainfully employed or to further his or her education.

8x. Total allowances: 8e + 8n + 8p + 8s + 8t:
The total amount of all of the family's allowances. Enter the sum of total permissible deductions (line 8e), medical/disability assistance allowance (line 8n), elderly/disability allowance (line 8p), dependent allowance (line 8s), and total annual unreimbursed childcare costs (line 8t).

8y. Adjusted annual income: 8a minus 8x (if 8x is larger, put 0):
The family's adjusted annual income. Subtract total allowances (line 8x) from total annual income (line 8a). If total allowances (line 8x) are larger than or equal to total annual income (line 8a), enter 0 (zero).

Section 9: Total Tenant Payment (TTP)

What is the total tenant payment?

Total tenant payment (line 9j) is the highest of the following amounts, rounded to the nearest dollar:

- 10 percent of the family's monthly income (line 9c);
- Program-specified percent of the family's adjusted monthly income (line 9f);
- A portion of the family's welfare assistance, specifically designated for the family's housing costs, determined by a public welfare agency (line 9g);
- The minimum rent of the unit (line 9h); or
- Enhanced Voucher minimum rent (line 9i).

9a. Total monthly income: 8a ÷ 12:

Divide total annual income (line 8a) by 12 to get total monthly income.

Example: If the annual income in line 8a is $12,000, the calculation reads: $12,000 ÷12 = $1,000.

9c. TTP if based on annual income: 9a x 0.10:

Multiply total monthly income (line 9a) by 0.10.

Example: If the family has a total monthly income of $750 as indicated in line 9a, the calculation reads: $750 x 0.10 = $75.

9d. Adjusted monthly income: 8y ÷ 12:

Divide adjusted annual income (line 8y) by 12.

Example: If the family has an adjusted annual income of $2400 as indicated in line 8y, the calculation reads: $2400 ÷12 = $200.

9e. Percentage of adjusted monthly income: Use 30% for Vouchers or Moderate Rehabilitation :

Percentage of adjusted monthly income used to determine TTP. The maximum percentage for this calculation is 30%. Use 30% for tenants that participate in a voucher or moderate rehabilitation program.

What do I enter for families in Public Housing?

Enter a number up to 0.30 for families in Public Housing.

9f. TTP if based on adjusted annual income: (9d X 9e) ÷ 100:

Multiply the adjusted monthly income (line 9d) by percentage of adjusted monthly income (line 9e) and divide by 100.

Example: If the family has an adjusted monthly income of $673, as indicated in line 9d, and is in a voucher or moderate rehabilitation program, the calculation reads: ($673 x 30) ÷ 100 = $202.

9g. Welfare rent per month (if none put 0):

If the family receives welfare assistance, include the amount that the welfare assistance agency specifically designates for shelter and utilities. The welfare assistance agency may adjust this amount in accordance with the actual cost of shelter and utilities. If the family does not receive welfare rent, enter 0 (zero).

9h. Minimum rent (if waived, put 0):

The PHA-established minimum rent amount per month. The PHA may require the tenant to pay a minimum rent amount up to $50.

In case of financial hardship, how do I enter minimum rent?

Enter zero for a family that has requested a financial hardship exemption and for whom the PHA has suspended the minimum rent. If the PHA then does not grant the family a hardship exemption because it determines the hardship is only temporary, submit an interim reexamination with the reinstated minimum rent.

9i. Enhanced Voucher minimum rent:

Enhanced Vouchers only. Enter the monthly rent that the family was paying on the date of the eligibility event for the project. Families assisted with Enhanced Voucher assistance have a special statutory minimum rent requirement. The law requires that a family receiving Enhanced Voucher assistance must pay a rent amount that is no less than the rent that the family was paying on the date of the "eligibility event" for the project in question.

What is the date of the eligibility event?

In the case of an owner opt-out, the date of the eligibility event is the expiration date of an expiring project-based contract. For preservation prepayments, the date of the eligibility event is the

effective date of the prepayment of the mortgage, or voluntary termination of the mortgage insurance.

How do I calculate Enhanced Voucher minimum rent if the family income changes?
The method for calculating the Enhanced Voucher minimum rent changes if the family's income subsequently decreases significantly (15 percent or more) from the family's gross income on the effective date of the prepayment. Guidance on recalculating minimum rent in cases where a family's income significantly decreases is discussed in detail in Notice PIH 2000-9.

9j. TTP, highest of lines 9c, 9f, 9g, 9h or 9i:
The total tenant payment (TTP). Indicate the highest of the amounts listed in lines 9c, 9f, 9g, 9h, or 9i. (see 24 CFR 5.628)

9k. Most recent TTP:
The most recent total tenant payment (TTP) amount for the family. This amount is only available if the family previously lived in subsidized housing.

9m. Qualify for minimum rent hardship exemption? (Y or N):
Under PHRA, a family does not have to pay the PHA-established minimum rent if it qualifies for a financial hardship exemption. (See 24 CFR 5.630(b)).

After the family requests a financial hardship exemption, the PHA must promptly determine whether the family is unable to pay the minimum rent because of financial hardship as described in the PHA's written policie

Section 10: Public Housing and Turnkey III

General Rules:

- Complete if the family's program type is Public Housing (line 1c=P) and family participates in Public Housing and/or Turnkey III and the type of action is New Admission (2a=1), Annual Reexamination (2a=2), Interim Reexamination (2a=3), or Other Change of Unit (2a=7).
- Do not complete for ineligible police officers or over-income families who reside in Public Housing.

10a. TTP: Copy from 9j:

The total tenant payment (TTP). This is the amount per month the PHA may require the family to pay the unit owner unless the family pays a flat or ceiling rent.

10b. Unit's flat rent (see Appendix III for Mixed Family Flat Rent calculation):

Indicate the flat rent dollar amount. Flat rent is set by the unit size and building type. If a PHA uses the ceiling rent amount for flat rent, input the ceiling rent amount in this line.

How do I calculate flat rent for a mixed family?

See Appendix III for the Mixed Family Flat Rent calculation to compute the mixed family flat rent to enter in line 10b. Use Appendix III when one or more family members are ineligible noncitizens (3i=IN). Enter the amount from line 7 in the appendix in line 10b as the mixed family's flat rent amount.

Income Based Rent Calculation

Complete line 10c - 10f if the family receives full rental subsidy.

10c. Ceiling rent, if any:

The highest rent amount the PHA will require a family to pay for a particular unit size. The PHA determines the ceiling rent, which is similar to the Fair Market Rent (FMR). If no ceiling rent, enter 0 (zero).

10d. Lower of TTP or ceiling rent (if no ceiling rent, put 10a):

Indicate the lesser amount of either the TTP (line 10a) or ceiling rent (line 10c). If ceiling rent is 0 (zero) or there is no ceiling rent, enter the TTP indicated in line 10a.

10e. Utility allowance, if any:

If the rental payment does not include all utilities, indicate the monthly allowance amount for tenant supplied utilities that apply to the unit. If there is no utility allowance, enter 0 (zero).

10f. Tenant rent: 10d minus 10e:

The rent amount the family pays to the PHA after deducting the utility allowance (line 10e) from the lower rent (line 10d); or the total credit amount the family receives to pay utilities.

What does it mean when tenant rent is positive?

If the lower of TTP or ceiling rent (line 10d) minus the utility allowance (line 10e) results in a positive number or 0 (zero), this line reflects the tenant's rent to the PHA.

Example: The utility allowance amount in line 10e is $100 per month, and the lower rent in line 10d is $450. The calculation reads**:** $450 - $100 = $350. The tenant pays $350 to the PHA.

What does it mean when tenant rent is negative?

If the result is a negative number, this line reflects a credit to the tenant, commonly referred to as the utility reimbursement.

Example: The utility allowance in line 10e is $100, and the lower rent in line 10d is $75. The calculation reads**:** $75 - $100 = -$25. The tenant receives a $25 credit (i.e., utility reimbursement).

Income Based Prorated Rent Calculation

Complete lines 10h – 10s if the family receives a prorated rental subsidy (i.e., one or more family members indicated ineligible noncitizen (IN) in line 3i).

10h. Public Housing maximum rent:

Indicate the maximum rent that the PHA (owner) can charge for the unit. The Public Housing maximum rent (line 10h) is between $5 and $3,000 per year.

How do I calculate maximum rent?
To calculate the maximum rent for a unit, list the TTPs paid by all tenants that live in a unit of the same size in the PHA's jurisdiction from largest to smallest, and then take the TTP that falls at the 95th percentile. Do not take the average of all TTPs and then compute 95 percent of that average. *Example:* If you have 100 TTPs and list them from highest to lowest, the maximum rent is equal to the 95th highest rent, regardless of the TTP amount.

10i. Family maximum subsidy: 10h minus 10a:
The maximum amount of rent subsidy available to the family. Subtract total tenant payment (TTP) (line 10a) from the Public Housing maximum rent (line 10h).

10j. Total number eligible:
Total number of family members eligible for rent subsidy based on the Noncitizens Rule. Family members do not include live-in aides or foster children or adults. Eligible family members have citizenship codes in line 3i of:
EC = Eligible citizen
EN = Eligible noncitizen
PV = Pending verification

10k. Total number in family:
Total number of family members in the household. Include all family members, including ineligible noncitizen family members (3i=IN). Do not include live-in aides or foster children/adults.

10n. Eligible subsidy: (10i ÷ 10k) X 10j:
The total amount of rent subsidy for which the family is eligible. Divide the family maximum subsidy (line 10i) by the total number in family (line 10k) and multiply the result by the total number of eligible family members (line 10j).

Example: The family maximum subsidy (line 10i) is $500 and the family consists of 4 members (line 10k) of which 3 members are eligible for rent subsidy (line 10j). The calculation reads ($500 ÷ 4) X 3 = $375. The family's eligible subsidy is $375.

10p. Mixed family TTP: 10h minus 10n:
Indicate the mixed family total tenant payment (TTP) for the unit based on the proration calculation. The mixed family TTP is the Public Housing maximum rent (line 10h) minus eligible subsidy (line 10n).

10r. Utility allowance, if any:
If the payment does not include all utilities, indicate the monthly allowance amount for tenant supplied utilities that apply to the family occupied unit.

What do I enter if there is no utility allowance?
If there is no utility allowance, enter 0 (zero).

10s. Mixed family tenant rent: 10p minus 10r:
The rent amount the family pays to the PHA after deducting the utility allowance (line 10r) from the mixed family total tenant payment (TTP) (line 10p); or the total credit amount the family receives to pay for utilities.

What does it mean when the mixed family tenant rent is positive?
If mixed family total tenant payment (line 10p) minus the utility allowance (line 10r) results in a positive number or 0 (zero), this line reflects the tenant's rent to the PHA.

Example: The utility allowance amount in line 10r is $100 per month, and the mixed family total tenant payment in line 10p is $450. The calculation reads: $450 - $100 = $350. The tenant pays $350 to the PHA.

What does it mean when the mixed family tenant rent is negative?
If the result is a negative number, this line reflects the credit to the tenant, commonly referred to as a utility reimbursement.

Example: The utility allowance in line 10r is $100, and the mixed family total tenant payment in line 10p is $75. The calculation reads: $75 - $100 = -$25. The tenant receives a $25 credit (i.e., utility reimbursement).

Type of Rent

10u. Type of rent selected:
Indicate whether the tenant selected an income based rent or a flat rent.

- Income based - Check this box if the family selected income based rent.
- Flat - Check this box if the family selected flat rent

Section 11: Project Based Certificates and Vouchers

General Rules:

- Complete for families that receive project based assistance, where the PHA has an agreement with the project owner to subsidize the owner's project.
- Complete if the family's program type is Certificates (1c=CE) for Project-based Certificates or if the family's program type is Vouchers (1c=VO) for Project-based Vouchers.
- Complete if the type of action is New Admission (2a=1), Annual Reexamination (2a=2), Interim Reexamination (2a=3), or Other Change of Unit (2a=7).

11b. Is family now moving to this unit? (Y or N):

Indicate Y (Yes) if the family is moving into the unit in connection with the reported action. If the family leases in-place or if the family will remain in the same unit at the time of re-examination, enter N.

11d. Did family move into your PHA jurisdiction under portability? (Y or N) (if no, skip to 11g):

Indicate whether or not the household will move or has moved into the PHA's jurisdiction under portability. If you answer yes to this question, continue to answer yes for this family as long as the family resides in your PHA jurisdiction.

11e. Cost billed per month (put 0 if absorbed):

PHA should always put a 0 in this field. PHA cannot bill another PHA for payments under a project-based HAP contract.

11f. PHA code billed:

PHA should leave this line blank.

11g. Housing type:

Check the housing type that applies to the family's housing unit, if applicable.

- *Group home (prorate gross rent):* A state-approved group home where 2 to 12 elderly or disabled individuals live in a single unit.
- *SRO: 1 room occupied by 1 person:* A single room unit, usually without food preparation or sanitary facilities, occupied by only 1 person.

11h. Owner name:

The unit owner's legal name.

11i. Owner TIN/SSN:

Tax identification number (TIN) or Social Security Number (SSN) of the legal unit owner.

11k. Contract rent to owner:

Total monthly rent amount paid to the unit owner under the lease.

11m. Utility allowance, if any:

If the rental payment does not include all utilities, indicate the monthly allowance amount for tenant supplied utilities that apply to the family occupied unit.

What do I enter when there is no utility allowance?

If there is no utility allowance, enter 0 (zero).

How do I prorate the utility allowance for a group home?

If an elderly person or a person with disabilities resides in a group home, enter only the family's prorated portion of the unit's utility allowance. To derive the family's prorated portion, divide the number of persons in the assisted household (typically one, unless there is a live-in aide) by the total number of occupants (assisted and unassisted) who reside in the group home.

11n. Gross rent of unit: 11k + 11m:

The unit's total monthly rent amount. Add the contract rent to owner (line 11k) to the utility allowance (line 11m).

11q. TTP: Copy from 9j:

The total tenant payment (TTP). Copy from line 9j.

Rent Calculation (if prorated assistance (line 3u=p), skip to 11aa)

Complete if family receives full subsidy.

11r. Total HAP: 11n minus 11q. If 11q is larger, put 0:

Total housing assistance payment (HAP) equals the gross rent of unit (line 11n) minus total tenant payment (TTP) (line 11q).

11s. Tenant rent: 11k minus 11r:
The rent amount the family pays to the owner is the contract rent to owner (line 11k) minus the total HAP (line 11r); or the credit amount the family receives to pay for utilities.

***What if the tenant rent is positive or zero*?**
If the contract rent to owner (line 11k) minus the total HAP (line 11r) results in a positive number or 0 (zero), this line reflects the rent amount that the tenant pays to the owner.

Example: The total HAP amount in line 11r is $100 per month, and the contract rent to owner in line 11k is $450. The calculation reads**:** $450 - $100 = $350. The tenant pays $350 to the owner.

***What if the tenant rent is negative*?**
If the result is a negative number, this line reflects the credit to the tenant, commonly referred to as a utility reimbursement.

Example: The total HAP in line 11r is $475, and the contract rent to owner in line 11k is $450. The calculation reads**:** $450- $475 = -$25. The tenant receives a $25 credit (i.e., utility reimbursement).

11t. HAP to owner: lower of 11k or 11r:
The amount of the housing assistance payment to the unit owner. Indicate the lower of the contract rent to owner (line 11k) or the total HAP (line 11r).

Prorated Rent Calculation

Complete if one or more family members indicated ineligible noncitizen (IN) in line(s) 3i.

11aa. Normal total HAP: 11n minus 11q:
Amount of the normal total housing assistance payment. Subtract total tenant payment (TTP) (line 11q) from gross rent (line 11n).

11ae. Total number eligible:
Total number of family members eligible for rent subsidy based on the Noncitizens Rule. Family members do not include live-in aides or foster children and foster adults. Eligible family members have citizenship codes in line 3i of:
EC = Eligible citizen
EN = Eligible noncitizen
PV = Pending verification

11af. Total number in family:
Total number of family members in household. Do not include live-in aides or foster children and foster adults. Include ineligible noncitizen family members as part of the total number in the family.

11ag. Proration percentage: 11ae ÷ 11af:
Percentage of family eligible for rent subsidy. Divide total number eligible (line 11ae) by total number in family (line 11af). A family with ineligible family members is only eligible for a percentage of the rent subsidy. Use the proration percentage to determine the family's total prorated rent subsidy.

Example: There are 4 family members eligible for housing assistance (line 11ae), and 5 total family members (line 11af; 1 is ineligible for rent subsidy). The calculation reads**:** 4 ÷ 5 = 0.8 (or 80%).

11ah. Prorated total HAP: 11aa x 11ag:
Total prorated housing assistance payment (HAP). Multiply normal total HAP (line 11aa) by the proration percentage (line 11ag).

11ai. Mixed family TTP: 11n minus 11ah:
Total tenant payment (TTP) for the unit based on the proration calculation. Gross rent of unit (line 11n) minus the prorated total housing assistance payment (HAP) (line 11ah).

Example: If the gross rent (line 11n) is $450, and the prorated total HAP (line 11ah) is $200, the mixed family TTP is $450 - $200 = $250. This is the amount the PHA may require the mixed family to pay.

11aj. Utility allowance: Copy from 11m:
Monthly allowance amount for tenant supplied utilities if the rent does not include all utilities. Copy from line 11m.

What if there is no utility allowance?
If there is no utility allowance, enter 0 (zero).

What do I enter for a person in a group home?
If an elderly or disabled person lives in a group home, enter only the individual's prorated portion of the unit's utility allowance. To determine an individual's prorated portion, divide the number of persons in the assisted household (typically one unless there is a live-in aide) by the total number of occupants (assisted and unassisted) who live in the

group home.

11ak. Mixed family tenant rent: 11ai minus 11aj:

The rent amount the family pays to the owner after deducting the utility allowance (line 11aj) from the mixed family total tenant payment (TTP) (line 11ai); or the total credit amount the family receives to pay utilities.

What does it mean when the mixed family tenant rent is positive?

If the mixed family total tenant payment (line 11ai) minus the utility allowance (line 11aj) results in a positive number or 0 (zero), this line reflects the tenant's rent to the owner.

Example: The utility allowance amount in line 11aj is $100 per month, and the mixed family TTP in line 11ai is $450. The calculation reads: $450 - $100 = $350. The tenant pays $350 to the owner.

What does it mean when the mixed family tenant rent is negative?

If the result is a negative number, this line reflects the credit to the tenant, commonly referred to as a utility reimbursement.

Example: The utility allowance in line 11aj is $100, and the mixed family TTP in line 11ai is $75. The calculation reads: $75 - $100 = -$25. The tenant receives a $25 credit (i.e., utility reimbursement).

11an. Prorated HAP to owner: 11k minus 11ak (if 11ak is negative, put 11k):

The prorated housing assistance payment (HAP) to the unit owner. Subtract the mixed family tenant rent (line 11ak) from the contract rent to owner (line 11k). If the mixed family tenant rent in line 11ak is negative, enter the contract rent to owner (line 11k).

Section 12: Housing Choice Vouchers: Tenant Based Vouchers

General Rules:

- Complete if program type is tenant-based Voucher (1c=VO) and type of action is New Admission (2a=1), Annual Reexamination (2a=2), Interim Reexamination (2a=3), Portability Move-in (2a=4), Other Change of Unit (2a=7).

12a. Number of bedrooms on voucher:

The unit size (number of bedrooms) listed on the voucher issued to the family. This may be different than the number of bedrooms listed in line 5d (Number of bedrooms in the unit). Enter 0 (zero) for an efficiency or Single Room Occupancy (SRO) unit.

12b. Is family now moving to this unit? (Y or N):

Indicate if the family is moving into the unit in connection with the reported action. If the family leases in-place or if the family is remaining in the same unit at the time of re-examination, enter N.

12c. Does the family qualify as a Hard to House family? (Y or N):

Indicate whether or not the family qualifies as Hard to House.

- Y = Yes: the family has three or more minors or has a disabled member and is moving to a different unit
- N = No: the family does not have three or more minors, does not have a disabled member, or is not moving

Who qualifies as a Hard to House family?

A family qualifies as Hard to House if there are three or more minors or if there is a disabled family member and the family is moving to a different unit.

Who does not qualify as a Hard to House family?

A family with three or more minors or with a disabled member that is not moving to a different unit does not qualify as a Hard to House family. A family who owns a manufactured home (e.g. mobile home) and leases the space or pad does not qualify as hard to house.

12d. Did family move into your PHA jurisdiction under portability? (Y or N) (If no, skip to 12g):

Indicate whether or not the household has moved into the PHA's jurisdiction under portability. If you answer yes to this question, continue to answer yes for this family as long as the family resides in your PHA jurisdiction.

What do I enter if my PHA absorbed the family?

If a portability move-in occurred, indicate Y (Yes) regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program.

12e. Cost billed per month (put 0 if absorbed):

Under portability, the monthly amount billed to the initial PHA for the family's housing assistance payment (HAP) amount, on-going administrative fee, and any utility reimbursement to the family.

What do I enter if my PHA absorbed the family?

Enter 0 if the family was absorbed by the receiving PHA.

12f. PHA code billed:

The initial PHA's 2-letter state code and 3-digit identification number. Leave blank if the receiving PHA absorbs the family.

How do I find the initial PHA's identification number?

For help obtaining the initial PHA's identification number, contact the appropriate HUD field office, the HA Profiles Web Site within PIC or the PIC Help Hotline at 1-800-366-6827 or pichelp@hud.gov.

12g. Housing type:

Check the housing type that applies to the family's housing unit.

- *Group home (prorate gross rent):* A state-approved group home where 2 to 12 elderly or disabled individuals reside in a single unit.
- *Own manufactured home, lease space:* A family who occupies a manufactured home (e.g. mobile home) as its principle place of residence and leases, but does not own, the home space or pad.
- *SRO: 1 room occupied by 1 person:* A single room unit, usually without food preparation or sanitary facilities, occupied by only 1 person.

12h. Owner name:

The unit owner's legal name.

12i. Owner TIN/SSN:

Tax identification number (TIN) or Social Security Number (SSN) of the legal unit owner.

12j. Payment standard for family:
Enter the payment standard for the family. See 982.505(c).

What do I enter for Enhanced Vouchers?
For a family who stays at the multifamily project and who does not qualify for a smaller family unit size based on the PHA's subsidy standards, the payment standard is the gross rent of the family's unit.

What do I enter when the family has an Enhanced Voucher and is overhoused?
If the family qualifies for a smaller family unit size than the unit it occupies at the multifamily project, and if the family did not locate an eligible unit elsewhere during the voucher term despite a good faith effort, enter the gross rent of the oversized unit at the time of the family's admission to the voucher program. The HAP contract for an oversized unit automatically terminates after one year and then the family must follow normal program rules.

What do I enter for shared housing?
If the family shares the unit with another family, enter the lower of the payment standard for the family unit size or the family's prorated portion of the payment standard for the shared housing unit size. To get the family's prorated portion, divide the number of bedrooms in the family's private space by the total number of bedrooms in the shared housing.

What do I enter for a group home?
If an elderly person or a person with disabilities resides in group home, enter the lower of the payment standard for the family unit size or the family's prorated portion of the payment standard for the group home size. To derive the family's prorated portion, divide the number of persons in the assisted household (usually one, unless there is a live-in aide) by the total number of occupants (assisted and unassisted) who reside in the group home.

12k. Rent to owner:
Total monthly rent payable to the unit owner under the lease for the unit. For rental of a manufactured home space, enter the rent to owner for the space including any owner maintenance or management charges for the space. In a section 236, 221(d)(3)BMIR, 202, or 515 project, the rent to owner is the subsidized rent as determined in accordance with the requirements for those programs.

12m. Utility allowance, if any:
If the rent does not include all utilities, indicate the monthly allowance amount for tenant supplied utilities that apply to the family occupied unit.

What do I enter if there is no utility allowance?
If there is no utility allowance, enter 0 (zero).

How do I prorate the utility allowance for shared housing?
If the family shares the unit with another family, enter only the family's prorated portion of the unit's utility allowance. To derive the family's prorated portion, divide the number of bedrooms in the family's private space by the total number of bedrooms in the shared housing unit.

How do I prorate the utility allowance for a group home?
If an elderly person or a person with disabilities resides in a group home, enter only the family's prorated portion of the unit's utility allowance. To derive the family's prorated portion, divide the number of persons in the assisted household (typically one, unless there is a live-in aide) by the total number of occupants (assisted and unassisted) who reside in the group home.

12p. Gross rent of unit: 12k + 12m (or Space Rent):
Gross rent of unit or space rent. Add rent to owner (line 12k) to the utility allowance (line 12m).

12q. Lower of 12j or 12p:
Lower of Voucher payment standard for family (line 12j) or gross rent of unit (line 12p).

12r. TTP (copy from 9j):
Total tenant payment (TTP). Copy from 9j.

12s. Total HAP: 12q minus 12r:
Total housing assistance payment (HAP). Subtract total tenant payment (TTP) (line 12r) from line 12q. If the TTP (line 12r) is larger, enter 0 (zero).

Rent Calculation (If prorated assistance, skip to 12ab)

Complete if family receives full subsidy.

12t. Total family share: 12p minus 12s:
Amount the family contributes toward rent and utilities. Subtract total housing assistance payment (HAP) (line 12s) from gross rent of unit (line 12p). If

the total HAP (line 12s) is larger than the gross rent (line 12p), enter 0 (zero).

12u. HAP to owner: lower of 12k or 12s:
The amount of the housing assistance payment (HAP) to the unit owner. Indicate the lower of the rent to owner (line 12k) or total HAP (line 12s).

12v. Tenant rent to owner: 12k minus 12u:
Rent amount the family pays to the owner after deducting the housing assistance payment (HAP) to owner (line 12u) from the rent to owner (line 12k).

12w. Utility reimbursement to the family: 12s minus 12u, but do not exceed 12m:
The utility reimbursement to the family from the PHA. Subtract housing assistance payment (HAP) to owner (line 12u) from total HAP (line 12s), but do not exceed the utility allowance (line 12m).

Prorated Rent Calculation

Complete if one or more family members indicated ineligible noncitizen (IN) in line(s) 3i.

12ab. Normal total HAP: copy from 12s, but do not exceed 12p:
The amount of the normal total housing assistance payment (HAP). Copy from 12s, but do not exceed the amount in 12p (gross rent).

12ac. Total number eligible:
Total number of family members eligible for rent subsidy based on the Noncitizens Rule. Family members do not include live-in aides or foster children and foster adults. Eligible family members have citizenship codes in line 3i of:

EC = Eligible citizen
EN = Eligible noncitizen
PV = Pending verification

12ad. Total number in family:
Total number of family members in household. Include all family members, including ineligible noncitizen family members (3i=IN). Do not include live-in aides or foster children or foster adults.

12ae. Proration percentage: 12ac ÷ 12ad:
The percentage of the family eligible for rent subsidy. A family with ineligible family members is only eligible for a percentage of the rent subsidy. Use the proration percentage to determine the family's total prorated rent subsidy. Divide the total number eligible (line 12ac) by the total number in family (line 12ad).

Example: There are 4 family members eligible for housing assistance (line 12ac), and 5 total family members (line 12ad; 1 is ineligible for rent subsidy), the calculation reads: 4 ÷ 5 = 0.8 (or 80%).

12af. Prorated total HAP: 12ab x 12ae:
The prorated housing assistance payment. Multiply the normal total HAP (line 12ab) by the proration percentage calculated in line 12ae.

12ag. Mixed family total family contribution: 12p minus 12af:
Indicate the mixed family total family contribution based on the proration calculation. Take the gross rent of unit (line 12p) minus prorated total housing assistance payment (HAP) (line 12af).

Example: If the gross rent (line 12p) is $450, and the prorated total HAP is $200 (line 12af), the mixed family total family contribution is: $450 - $200 = $250. This is the total amount the mixed family must pay toward rent and utilities.

What if the mixed family contribution is negative?
If negative, put 0 (zero)

12ah. Utility allowance: copy from 12m:
If the payment does not include all utilities, indicate the monthly allowance amount for tenant supplied utilities that applies to the family occupied unit.

What do I enter if there is no utility allowance?
If there is no utility allowance, enter 0 (zero).

What do I enter for shared housing?
If the family shares the unit with another family, enter only the family's prorated portion of the unit's utility allowance. To derive the family's prorated portion, divide the number of bedrooms in the family's private space by the total number of bedrooms in the shared housing unit.

12ai. Mixed family tenant rent to owner: 12ag minus 12ah:
The rent amount the family pays to the owner after subtracting the utility allowance (line 12ah) from the mixed family total family contribution (line 12ag); or

the total credit amount the family receives to pay for utilities.

What does it mean when the mixed family tenant rent to owner is a positive number?
If the mixed family total family contribution (line 12ag) minus the utility allowance (line 12ah) results in a positive number or 0 (zero), this line reflects the tenant's rent to the owner.

Example: The utility allowance amount in line 12ah is $100 per month, and the mixed family total family contribution in line 12ag is $450. The calculation reads**:** $450 - $100 = $350. The tenant pays $350 to the owner.

What does it mean when the mixed family tenant rent to owner is a negative number?
If the result is a negative number, this line reflects the credit to the tenant, commonly referred to as a utility reimbursement.

Example: The utility allowance in line 12ah is $100, and the mixed family total family contribution in line 12ag is $75. The calculation reads**:** $75 - $100 = -$25. The tenant receives a $25 credit (i.e., utility reimbursement).

12aj. Prorated HAP to owner: 12k minus 12ai. If 12ai is negative, put 12k:

The total prorated amount of the housing assistance payment (HAP) to the unit owner. Subtract the mixed family tenant rent to owner (line 12ai) from the rent to owner (line 12k). If the mixed family tenant rent to owner (line 12ai) is negative, enter the rent to owner (line 12k).

Section 13: Section 8: Moderate Rehabilitation (Mod Rehab)

General Rules:

- Complete if program type is Moderate Rehabilitation (1c=MR) and type of action is New Admission (2a=1), Annual Reexamination (2a=2), Interim Reexamination (2a=3), or Other Change of Unit (2a=7).
- Do not complete for ineligible police officers or security personnel.

13a. HAP contract number:

The housing assistance payment (HAP) contract number. Include the sequence number for each HAP contract. The HAP contract sequence number identifies the particular project (funding increment) under which the HAP contract is funded.

How do I enter the HAP contract number?
Break down the contract number into the pieces that follow. This is the new contract number format based on the Housing and Urban Development Central Accounting Program System (HUDCAPS) format:

- *State code* - The first 2 boxes, indicate the Federal standard code of the state where the project is located
- *PHA code* - The next 3 boxes, indicate the 3-digit PHA number that HUD assigned
- *Program code* - The next 2 boxes, indicate the program (e.g., MR or SR)
- *Increment number* - The next 4 boxes, allow up to 4 numbers for the project (funding increment)
- *Sequence number* - The final 4 boxes, allow up to 4 numbers for the HAP contract sequence number.

Example: The project number is WI-439-MR-0002. The PHA uses funding under this project number for three separate HAP contracts with three different owners and three different buildings. The HAP contract sequence numbers are**:** WI-439-MR-0002-0001; WI-439-MR-0002-0002; and WI-439-MR-0002-0003.

Do I enter a sequence number even if there is only one HAP contract under the project?
Add the sequence number to the project number even if there is only one HAP contract under the project. If the PHA uses all of the project funding for only one HAP contract, the HAP contract number is**:** WI-439-MR-0002-0001.

13b. Mod Rehab SRO Program for homeless? (Y or N):

Indicate whether the family's unit is in a Single-Room Occupancy (SRO) project under the SRO Program for Homeless Individuals (24 CFR Part 882, Subpart H).

13c. Mod Rehab SRO unit (not homeless program) (Y or N):

Indicate whether the family's unit is an SRO unit, but not under the SRO Program for Homeless Individuals.

What do I enter if the tenant participates in the Mod Rehab SRO Program for the Homeless?
If the tenant participates in the Mod Rehab SRO Program for the Homeless, enter N (No).

13d. Owner name:

The unit owner's legal name.

13e. Owner TIN/SSN:

Tax identification number (TIN) or Social Security Number (SSN) of the legal unit owner.

13f. Current base rent:

The amount of the current base rent for the unit that reflects the most recent rent adjustment.

13g. Rehabilitation debt service:

The amount of the owner's current monthly rehabilitation debt service payment for the unit.

What do I enter if the owner paid off the loan?
If the owner paid off the rehabilitation loan, enter 0 (zero) here.

13h. Contract rent to owner: 13f + 13g:

The monthly rent amount paid to the Mod Rehab unit owner as specified in the housing assistance payment (HAP) contract. Add the current base rent (line 13f) to any monthly rehabilitation debt service payment (line 13g).

13i. Utility allowance, if any:

If the contract rent to owner does not include all utilities, indicate the monthly allowance amount for tenant supplied utilities that apply to the family occupied unit.

What do I enter if there is no utility allowance?
If there is no utility allowance, enter 0 (zero).

13j. TTP: Copy from 9j:
The total tenant payment (TTP). Copy from line 9j.

Rent Calculation (If prorated, skip to 13p)

13k. Tenant rent: 13j minus 13i (if 13j is greater than 13h + 13i, put 13h):
The rent amount the family pays to the owner after deducting the utility allowance (line 13i) from the total tenant payment (TTP) (line 13j); or the total credit amount the family receives to pay for utilities. If the TTP (line 13j) is greater than the gross rent (line 13h plus line 13i) enter the contract rent to owner (line 13h).

What does it mean when the tenant rent is a positive number?
If the total tenant payment (line 13j) minus the utility allowance (line 13i) results in a positive number or 0 (zero), this line reflects the tenant's rent to the owner.

Example: The utility allowance amount in line 13i is $100 per month, and the TTP in line 13j is $450. The calculation reads**:** $450 - $100 = $350. The tenant pays $350 to the owner

What does it mean when the tenant rent is a negative number?
If the result is a negative number, this line reflects the credit to the tenant, commonly referred to as a utility reimbursement.

Example: If the utility allowance in line 13i is $100, and the TTP in line 13j is $75. The calculation reads**:** $75 - $100 = -$25. The tenant receives a $25 credit (i.e., utility reimbursement).

13m. HAP to owner: 13h minus 13k (If 13k is negative, put 13h):
The amount of the housing assistance payment (HAP) to the unit owner. Subtract the tenant rent (line 13k) from the contract rent to owner (line 13h). If the tenant rent indicated in line 13k is negative, enter the contract rent to owner (line 13h).

Example: The contract rent is $400, and the tenant rent is $200. The calculation reads**:** $400 - $200 = $200. The $200 balance is the housing assistance payment that the PHA pays to the unit owner.

Prorated Rent Calculation

Complete if one or more family members indicated ineligible noncitizen in line(s) 3i.

13p. Gross rent: 13h + 13i:
The unit's total monthly rent amount. Add the contract rent to owner (line 13h) to the utility allowance (line 13i).

13q. Normal total HAP: 13p minus 13j:
The amount of the normal total housing assistance payment (HAP). Subtract total tenant payment (TTP) (line 13j) from the gross rent (line 13p).

13r. Total number eligible:
Total number of family members eligible for rent subsidy based on the Noncitizens Rule. Family members do not include live-in aides or foster children or foster adults. Eligible family members have citizenship codes in line 3i of:

- EC = Eligible citizen
- EN = Eligible noncitizen
- PV = Pending verification

13s. Total number in family:
Total number of family members in household. Include all family members, including ineligible noncitizen family members (3i=IN). Do not include live-in aides or foster children or foster adults.

13t. Proration percentage: 13r ÷ 13s:
Percentage of family eligible for rent subsidy. Divide the total number eligible (line 13r) by the total number in family (line 13s). A family with ineligible family members is only eligible for a percentage of the rent subsidy. Use the proration percentage to determine the family's total prorated rent subsidy.

Example: There are 4 family members eligible for housing assistance (line 13r), and 5 total family members (line 13s; 1 is ineligible for rent subsidy), the calculation reads 4 ÷ 5 = 0.8 (or 80%)

13u. Prorated total HAP: 13q x 13t:
The prorated housing assistance payment (HAP). Multiply the normal total HAP (line 13q) by the proration percentage (line 13t).

13v. Mixed family TTP: 13p minus 13u:
Indicate the mixed family total tenant payment (TTP). Subtract the prorated total housing assistance payment (HAP) (line 13u) from the gross rent (line 13p).

Example: If the gross rent is $450, and the prorated HAP is $200, the mixed family TTP is**:** $450 - $200 = $250. This is the amount the PHA may require the tenant to pay.

13w. Utility allowance (copy from 13i):

If the payment does not include all utilities, indicate the monthly allowance amount for tenant supplied utilities that applies to the family occupied unit.

What do I enter when there is no utility allowance?

If there is no utility allowance, enter 0 (zero).

13x. Mixed family tenant rent: 13v minus 13w:

The rent amount the family pays to the owner after deducting the utility allowance (line 13w) from the mixed family total tenant payment (TTP) (line 13v); or the total credit amount the family receives to pay for utilities.

What do I enter if the mixed family tenant rent is a positive number?

If mixed family total tenant payment (line 13v) minus the utility allowance (line 13w) results in a positive number or 0 (zero), this line reflects the tenant's rent to the owner.

Example: The utility allowance amount in line 13w is $100 per month, and the mixed family TTP in line 13v is $450. The calculation reads**:** $450 - $100 = $350. The tenant pays $350 to the owner.

What do I enter if the mixed family tenant rent is a negative number?

If the result is a negative number, this line reflects the credit to the tenant, commonly referred to as a utility reimbursement.

Example: The utility allowance in line 13w is $100, and the mixed family TTP in line 13v is $75. The calculation reads**:** $75 - $100 = -$25. The tenant receives a $25 credit (i.e., utility reimbursement).

13z. Prorated HAP to owner: 13h minus 13x (If 13x is negative, put 13h):

The total prorated amount of the housing assistance payment (HAP) that the PHA pays to the unit owner. Subtract the mixed family tenant rent (line 13x) from the contract rent to owner (line 13h). If the mixed family tenant rent indicated in line 13x is negative, enter the contract rent to owner (line 13h).

Section 15: Homeownership Vouchers

General Rules:

- Complete if program type is Homeownership (line 1c=VO) and type of action is New Admission (2a=1), Annual Reexamination (2a=2), Interim Reexamination (2a=3), Portability Move-in (2a=4), or Other Change of Unit (2a=7).

15a. Is family now moving to this home?:

Indicate if the family is now moving into the home. If the family will remain in the same home at the time of admission or of reexamination, enter N.

15b. Date (mm/dd/yyyy) of initial HQS inspection:

Date of the initial housing quality standards (HQS) inspection.

15c. Did family move into your PHA jurisdiction under portability? (Y or N) (if no, skip to 15f):

Indicate whether or not the household has moved into the PHA's jurisdiction under portability, regardless of whether the PHA bills the initial PHA or absorbs the family into its own voucher homeownership program. If you answer yes to this question, continue to answer yes for this family as long as the family resides in your PHA jurisdiction.

15d. Cost billed per month (put 0 if absorbed):

Monthly amount billed to the initial PHA for the family's housing assistance payment (HAP) amount, on-going administrative fee, and any utility reimbursement to the family. Enter 0 if the family was absorbed by the receiving PHA.

15e. PHA code billed:

The initial PHA's 2-letter state code and 3-digit identification number. Leave blank if the receiving PHA absorbs the family.

How do I find the initial PHA's identification number?

For help obtaining the initial PHA's identification number, contact the appropriate HUD field office, the HA Profiles Web Site within PIC or the PIC Help Hotline at 1-800-366-6827 or pichelp@hud.gov.

15f. Monthly homeownership payment (PITI & MIP if applicable):

The monthly homeownership cost. Includes principal and interest on initial mortgage debt, taxes and insurance (PITI) and any mortgage insurance premium (MIP), if applicable.

What do I enter for homeownership in a cooperative (co-op)?

For homeownership in a cooperative, enter the monthly cooperative charge under the occupancy agreement, including real estate taxes and public assessments, and any principal and interest on initial debt to finance purchase of cooperative shares.

15g. Utility allowance:

The PHA's utility allowance for the unit.

15h. Monthly maintenance allowance:

The amount of PHA's allowance for the monthly routine maintenance costs.

15i. Monthly major repair/replacement allowance:

The amount of the PHA's allowance for major home repairs and replacements.

15j. Monthly co-op/condominium assessments:

If applicable, enter the amount of co-op or condominium association operation and maintenance assessments.

15k. Monthly principal and interest on debt for improvements, if any:

The amount of principal and interest for debt associated with major repairs, replacements, or improvements to the unit.

15m. Gross homeownership expense: 15f + 15g + 15h + 15i + 15j + 15k:

Calculation of tenant's total cost of homeownership. Sum of 15f through 15k.

15n. Payment standard for the family:

Enter the lower of the payment standard for the family unit size or the payment standard for the unit size that the family actually owns. See 24 CFR 982.503 and 24 CFR 982.635(b).

15p. Lower of 15m and 15n:
The lower of gross homeownership expense (15m) and the payment standard for the family (15n).

15q. TTP: copy from 9j:
Total tenant payment (TTP). Copy from line 9j.

15r. HAP: 15p minus 15q (if 15q is larger, put 0):
The amount of monthly homeownership assistance payment (HAP). Subtract the total tenant payment (TTP) (line 15q) from the lower of 15m and 15n (line 15p). If the TTP (line 15q) is larger, enter 0.

Family Share Calculation (If prorated, skip to 15aa)

Complete if family receives full subsidy.

15s. Total family share: 15m minus 15r:
The total amount the family contributes toward homeownership is equal to the gross homeownership expense (line 15m) minus the HAP (line 15r).

Prorated Subsidy Calculation

Complete if one or more family members indicated ineligible noncitizen in line(s) 3i.

15aa. Normal total HAP: copy from 15r:
The amount of the normal total homeownership assistance payment (HAP).

15ab. Total number eligible:
Total number of family members eligible for homeownership subsidy based on the Noncitizens Rule. Family members do not include live-in aides or foster children or foster adults. Eligible family members have citizenship codes in line 3i of**:**
EC = Eligible citizen
EN = Eligible noncitizen
PV = Pending verification

15ac. Total number in family:
Total number of family members in the household. Include all family members, including ineligible noncitizen family members (3i=IN). Do not include live-in aides or foster children or foster adults.

15ad. Proration percentage: 15ab ÷ 15ac:
Percentage of family eligible for homeownership subsidy. Divide the total number eligible (line 15ab) by the total number in family (line 15ac). A family with ineligible family members is only eligible for a percentage of the homeownership subsidy. Use the proration percentage to determine the family's total prorated homeownership subsidy.

15ae. Prorated HAP: 15aa X 15ad:
The total prorated amount of the homeownership assistance payment (HAP) to the homeowner. Multiply normal total HAP (line 15aa) by the proration percentage (line 15ad).

15af. Mixed family total family share: 15m minus 15ae:
Indicate the mixed family total family contribution based on the proration calculation. Subtract the prorated homeownership assistance payment (HAP) (line 15ae) from the gross homeownership expense (line 15m).

Section 17: Family Self-Sufficiency (FSS)/ Welfare to Work (WtW) Voucher Addendum

General Rules:

- Complete this section to track the enrollment, progress, or exit of a family that participates in an FSS program or the WtW Voucher program.
- Failure to submit FSS exits may impact minimum FSS program size obligations.

17a. Participate in special programs? (check all that apply):

Identify if the family participates in a Family Self-Sufficiency (FSS) program, a Welfare to Work (WtW) voucher program, or both. If the family participates in both programs, please check both.

17b. FSS report category (check no more than one):

If the family participates in FSS, check one category to indicate the purpose of the Addendum.

- *Enrollment Report* - New enrollment in the FSS program.
- *Progress Report* - Update to family's FSS status.
- *Exit Report* - Exit from the FSS program.

17c. FSS effective date (mm/dd/yyyy) of action:

The effective date of the FSS action being reported in line 17b.

Can this date be different from the effective date of action (line 2b)?

If the PHA submits an FSS report using any action type other than FSS/WtW Addendum Only (2a = 8), the FSS effective date and the effective date in line 2b may differ. Different effective dates can occur if the PHA reviewed the family's FSS program status on a different day than the review took place for the other household data reported in the form. However, if the PHA submits a FSS/WtW Addendum Only (2a = 8), the FSS effective date should match the effective date in line 2b.

17d. PHA code of PHA administering FSS contract:

The PHA code of the PHA that executed the FSS contract with the family and is counting the family in its FSS program.

What should I enter if the family resides in one PHA's jurisdiction, but has a contract of participation with a different PHA?

A family may reside in one PHA, but have an executed FSS contract of participation with another PHA. Enter the PHA code for the PHA that has an executed FSS contract with the family.

How do I find the administering PHA's identification number?

For help obtaining the administering PHA's identification number, contact the appropriate HUD field office, the HA Profiles Web Site within PIC or the PIC Help Hotline at 1-800-366-6827 or pichelp@hud.gov.

Example: A family executed an FSS contract with PHA001 and then moved into PHA002's jurisdiction. PHA001 is still administering the FSS program while the family resides in PHA002's jurisdiction. Enter the PHA code for PHA001 in line 17d in this situation because PHA001 is still responsible for administering the FSS contract of the family.

17e. WtW report category (check no more than one):

If the family participates in WtW, check one category to indicate the purpose of the Addendum.

- *Enrollment Report* - New enrollment in the WtW program.
- *Progress Report* - Update to family's WtW status.
- *Exit Report* - Exit from WtW program.

17f. WtW effective date (mm/dd/yyyy) of action:

The date of the WtW voucher program action.

Can this date be different from the effective date of action (line 2b)?

If the PHA submits an WtW report using any action type other than FSS/WtW Addendum Only (2a = 8), the WtW effective date and the effective date in line 2b may differ. Different effective dates can occur if the PHA reviewed the family's WtW program status on a different day than the review took place for the other household data reported in the form. However, if the PHA submits a FSS/WtW Addendum Only (2a = 8), the WtW effective date should match the effective date in line 2b.

17g.(1) PHA code of PHA that issued the WtW Voucher: The PHA code associated with the PHA that issued the WtW Voucher. A family may receive a WtW Voucher from one PHA, but subsequently move to a unit within a new PHA's jurisdiction.

17g.(2) PHA code of PHA counting the family as enrolled in its WtW Voucher program (if different from 17g(1)): The PHA code of the PHA counting the family as enrolled. Only complete if this PHA code differs from 17g(1).

17h. General information: General information about the family.

17h.(1) Current employment status of head of household. Check the box to indicate the head of household's employment status at the time addendum is completed: Indicate the head of household's current employment status.

- *Full-time (32 hours per week or more)* - Head of household works 32 hours or more per week.
- *Part-time* - Head of household works less than 32 hours per week.
- *Not employed* - Head of household is not employed.

17h.(2) Date (mm/dd/yyyy) current employment began: The date the head of household began his/her current job.

17h.(3) Benefits in current employment (check all that apply): Indicate the benefits received through the head of household's current employment. Check all that apply**:**

- *Health* - Head of household's current employer provides health insurance
- *Retirement Account* - Head of household's current employer provides a retirement account
- *Other* - Head of household's current employer provides other benefits aside from health insurance and retirement accounts.

17h.(4) Years of school completed by the head of household. Enter the highest grade of education or years of formal schooling the head of household completed at the time Addendum is submitted. (0-25): Enter the highest grade or the full years of formal schooling that the head of household completed (0-25). Years of schooling begin with 1st grade (do not count kindergarten or pre-school).

Example: If the head of household completed school through 7th grade, enter 7 in the box. This indicates 7 full years of formal schooling. If the head of household completed high school and 2 years of college, vocational, technical, or other 2 - 4 year accredited school, enter 14 in the box. *Example:* If the head of household attended but did not finish 8th grade, enter 7 in the box.

Example: If the head of household received a GED, enter 12 in the box (indicating the completion of high school).

17h.(5) Assistance received by the family (check all that apply): Indicate whether or not the family receives additional assistance, such as food stamps, Medicaid/Children's Health Insurance Program, TANF assistance, general assistance, or the earned income tax credit.

17h.(6) Number of children receiving child care services: Indicate the number of children in the household who receive child care services. Child care services must be of a type that provides sufficient hours of operation and serves an appropriate range of ages.

17i. Family services table (optional for WtW Voucher):

The family services table includes a list of different services and blank columns to complete. The columns indicate whether the participants need the services, whether the need for services was met during participation in the FSS or WtW program, and the type of entity or organization that provided the services.

17i.(1) Need (Y/N): Indicate whether or not the PHA identified individual training and service needs for any of the family members.

- *Education/training* -
  - *GED* - The GED is a Graduate Equivalency Diploma; Program participants need to attend classes to complete high school-equivalency credits.
  - *High school* - Program participants need to attend or return to high school to obtain a high school diploma.
  - *Post secondary* - Program participants need to attend or return to post secondary schooling (such as a college or university) to obtain a secondary degree.
  - *Vocational/job training* - Program participants need to attend a vocational or technical school (e.g., may obtain a license or certificate but not an official degree), or participate in job training classes (e.g., computer skills courses, etc.).
- *Job search/job placement* - Program participants need services to help them to search for employment or to use current

employment networks for placement in a permanent position.
- *Job retention* - Program participants need services to help retain their jobs.
- *Transportation* - Program participants need transportation to attend school, training, search for a job, or take children to child care.
- *Health services* - Program participants need specific health services, or well-child and well-family regular services and check-ups.
- *Alcohol and other drug abuse prevention services* - Program participants need services designed to help rehabilitate or help them with drug-related problems.
- *Mentoring* - Program participants need services that place them with role models or mentors in the community.
- *Homeownership counseling* - Program participants need a program designed to help participants migrate from housing assistance to homeownership.
- *Individual Development Account (IDA)* - Program participants need an Individual Development Account (IDA), which is a matched savings account that can be used by low-income households to purchase a home, seek postsecondary education, or capitalize a small business.
- *Child care* - Program participants need child care assistance.
- *None* - No special services are needed.

Example: If the FSS family head needs to complete his or her high school education, enter Y (Yes) in the appropriate box.

17i.(2) Need Met During Participation in Program (Y or N): If the PHA identified certain needs for family members, indicate whether or not the needs listed in 17i(1) were met while the family participated in the FSS or WtW Voucher program.

17i.(3) Service Provider: Indicate the code that corresponds to the type of service provider who meets the participant's need.
- *P = PHA* - Indicate if the PHA meets the service need.
- *T = TANF Agency* - Indicate if a TANF agency meets the service need.
- *D = DOL Grantee* - Indicate if a Department of Labor grantee meets the service need.
- *V = Voluntary Organization* - Indicate if a voluntary organization meets the service need.
- *PR = For Profit Organization* - Indicate if a "for profit" organization meets the service need.
- *N = Nonprofit Agency* - Indicate if a nonprofit organization meets the service need.
- *E = Employer* - Indicate if the employer meets the service need.
- *C = Community college* - Indicate if a community college meets the service need.

Family Self Sufficiency Program (if not in FSS program, skip to 17n)

17j. FSS Contract Information:

Contract information related to the participating family.

17j.(1) Initial start date (mm/yyyy) of contract of participation (FSS enrollment report only): The effective date of the family's FSS contract of participation; the date the family initially enrolled in the FSS program. Include all four digits of the year (i.e., 06/2000).

17j.(2) Initial end date (mm/yyyy) of contract of participation (FSS enrollment report only): The expiration date of the family's FSS contract of participation; the date the family is initially expected to exit the FSS program. The contract term is for a period of 5 years. Include all four digits of the year (i.e., 06/2005).

17j.(3) Contract date extended to (mm/yyyy) (if applicable): If applicable, the date to which the PHA has extended the family's FSS contract of participation. If the PHA did not extend the family's end date, leave this field blank. Include all four digits of the year (i.e., 06/2006).

How long can a contract be extended*?*
The FSS contract cannot be extended more than two years beyond the original expiration date.

17j.(4) Number of family members with Individual Training & Services Plan: The number of family members in the household who have current Individual Training and Services Plans under the FSS contract of participation.

17j.(5) Did the family receive selection preference because of related service program participation? (FSS enrollment report only) (Y or N): For new FSS enrollment, indicate whether or not the family received an FSS selection preference due to participation in a related service program.

17k. FSS Account Information:

Information about the family's FSS account.

17k.(1) Current FSS account monthly credit: The current dollar amount credited to the family's FSS account due to increases in earned income by the family. See Appendix II for instructions for calculating this amount. If there are no contributions to the family's FSS account, enter 0 (zero).

17k.(2) Current FSS account balance: The current dollar amount of the family's FSS account based on the most recent report of account funds and activity. Include the amounts paid into the account for the family, as well as the prorated investment income credited to the account. If there is no established FSS account, enter 0 (zero).

17k.(3) FSS account amount disbursed to the family (cumulative as of end of reporting period): Total dollar cumulative amount, if any, of all FSS escrow disbursements ever made to the family. If there are no disbursed funds, enter 0 (zero).

17m. FSS exit information (FSS exit report only):

Information about the family leaving the FSS program. Complete this section only if the family is exiting the FSS program (i.e., FSS Exit Report). The family may still be a public housing resident or a Housing Choice Voucher program participant.

17m.(1) Did family complete contract of participation? (Y or N): Indicate 'Y' if the family fulfilled all of its obligations under the contract during the contract term or if 30% of the family's monthly adjusted income equals or exceeds the existing housing fair market rent (FMR) for the unit size for which the family qualifies, and at completion, all family members met program requirements for being off welfare assistance.

17m.(2) If (1) is Yes, did family move to homeownership? (Y or N): Indicate if the family completed the contract and is moving to homeownership. Homeownership includes families that participate in the voucher homeownership option as well as those moving to other homeownership opportunities.

17m.(3) If (1) is No, reason for exit: Indicate why the family did not complete its FSS contract. Select one of the following reasons:

- *Left voluntarily* -- terminated contract through mutual consent of the family and the PHA, or the family decided to withdraw.
- *Asked to leave program* -- the PHA terminated the Contract of Participation because a family member failed to meet obligations required under the FSS Contract, or because the family's housing assistance program participation was terminated.
- *Portability move-out* -- the family exercised a portability move-out to another PHA's jurisdiction.
- *Left because essential service was unavailable* -- the PHA declared the Contract of Participation null and void because a particular service deemed essential to a family's ability to become self-sufficient was unavailable.
- *Contract expired but family did not fulfill obligations* -- the term of the Contract of Participation, including any extensions, expired but the family did not meet all contract obligations.

Welfare to Work (WtW) Voucher Program

17n. WtW Voucher program information (WtW voucher program enrollment report only):

Information about the family's participation in the WtW Voucher program.

17n.(1) Date (mm/dd/yyyy) Voucher issued: The date the PHA issued the Welfare to Work Voucher.

17n.(2) Date (mm/dd/yyyy) of request for lease approval (RFLA) for a unit leased: The date the family submitted a Request for Lease Approval (RFLA) to the PHA. The RFLA date must be equal to or later than the WtW Voucher issued date (line 17n(1)) and equal to or earlier than the WtW voucher program effective date of action (line 17f). If "Enrollment" is selected for the Welfare to Work Voucher report category (line 17e), a valid date must be entered (mm/dd/yyyy).

17q. Welfare to Work Voucher Program exit information (WtW exit report only):

Information about why the family is leaving the WtW Voucher program.

17q.(1) Is the family moving to Homeownership? (Y or N): Indicate Y (yes) if the family is moving to either the voucher homeownership program or to another homeownership opportunity.

17q.(2) Primary reason for leaving the WtW Voucher program: Identify the reason why the family is leaving the WtW program. Select only one.

- *Portability move-out* - the family exercised a portability move-out to another PHA's jurisdiction.
- *Family no longer needs subsidy* - the family no longer needs housing assistance.
- *Subsidy terminated for Housing Choice Voucher program violation, other than WtW voucher program obligations* - the family violated a Housing Choice Voucher program rule.
- *Subsidy terminated for violation of WtW voucher program obligations* - the family violated a WtW Voucher Program rule.
- *Family voluntarily withdrew from Housing Choice Voucher program* - the family withdrew from the Housing Choice Voucher program.
- *Other* - the family exited the WtW Voucher Program for a reason other than the ones stipulated above.

Appendix I

Federal Standard State and Territory Codes

States

AL = Alabama
AK = Alaska
AZ = Arizona
AR = Arkansas
CA = California
CO = Colorado
CT = Connecticut
DE = Delaware
DC = District of Columbia
FL = Florida
GA = Georgia
HI = Hawaii
ID = Idaho
IL = Illinois
IN = Indiana
IA = Iowa
KS = Kansas
KY = Kentucky
LA = Louisiana
ME = Maine
MD = Maryland
MA = Massachusetts
MI = Michigan
MN = Minnesota
MS = Mississippi
MO = Missouri
MT = Montana
NE = Nebraska
NV = Nevada
NH = New Hampshire
NJ = New Jersey
NM = New Mexico
NY = New York
NC = North Carolina
ND = North Dakota
OH = Ohio
OK = Oklahoma
OR = Oregon
PA = Pennsylvania
RI = Rhode Island
SC = South Carolina
SD = South Dakota
TN = Tennessee
TX = Texas
UT = Utah
VA = Virginia
VT = Vermont
WA = Washington
WV = West Virginia
WI = Wisconsin
WY = Wyoming

Territories

AS = America Samoa
FM = Federated States of Micronesia
GQ = Guam
MH = Marshall Islands
MP = Northern Mariana Islands
PW = Palau
RQ/PR = Puerto Rico
VQ/VI = Virgin Islands

Appendix II

Section 17, line 17k: FSS Escrow Account Credit Worksheet

Instructions for Completing the FSS Escrow Account Credit Worksheet:

1. Determine the escrow credit at each reexamination and interim determination occurring after the effective date of the FSS contract of participation while the family is participating in the FSS program.
2. Calculate the amount of the escrow credit with Form HUD-52652, or another document which incorporates the procedures in Form HUD-52652.
3. The amount of the escrow credit will vary depending on the income level of each FSS family and is based on increases of **earned** income since the effective date of the contract of participation. If the family's adjusted income exceeds the lower-income limit in the jurisdiction in which the FSS family is living (the amount on line 3 of this worksheet is greater than the amount on line 2), the family does not qualify for an escrow credit. In such cases, lines 4 through 22 of this worksheet should not be completed.

Head of the FSS Family:	**Date:**
1. Current Total Annual Income (Enter amount on line 7i of form HUD-50058.)	1.
2. Applicable Lower-Income Limit (Enter the current lower-income limit for the jurisdiction in which the FSS family is living.)	2.
3. Current Adjusted Annual Income (Enter amount on line 8y of form HUD-50058.) If line 3 is greater than line 2, this family does not qualify for an FSS credit.	3.
4. Earned income included in line 1 (Add up the income amounts in column 7f of form HUD-50058 that are coded B, M, F, HA, or W.)	4.
5. Earned income included in total annual income on the effective date of the FSS Contract of Participation (Enter the amount from the Contract of Participation.)	5.
6. Increase in earned income since the effective date of the FSS Contract of Participation (Line 4 minus line 5. If negative, enter 0.)	6.
7. Current Total Annual Income less increase in earned income since the effective date of the FSS Contract of Participation (Line 1 minus line 6)	7.
8. Thirty percent of current monthly Adjusted Annual Income (Line 3 divided by 40. The calculated amount should equal the amount on line 9f of form HUD-50058.)	8.

9. Current Adjusted Annual Income less increase in earned income since the effective date of the FSS Contract of Participation (Line 3 minus line 6)	9.
10. 30% of current monthly Adjusted Annual Income less increase in earned income since the effective date of the FSS Contract of Participation (Line 9 divided by 40)	10.
11. 10% of current monthly Annual Income less increase in earned income since the effective date of the FSS Contract of Participation (Line 7 divided by 120)	11.
12. If applicable, welfare rent (enter amount on line 9g of form HUD-50058) or public housing ceiling rent (enter amount on line 10c of form HUD-50058)	12.
13. TTP based on current Total Annual Income less increase in earned income since the effective date of the FSS Contract of Participation (If vouchers, enter the amount on line 10; otherwise, enter the greater of lines 10, 11, or 12.)	13.
14. Difference between 30% of current monthly Adjusted Annual Income and TTP adjusted for increases in earned income (Line 8 minus line 13. Enter 0 if negative.)	14.
15. Current TTP (Enter the amount on line 10d of form HUD-50058 or, in the case of vouchers, enter the amount on line 8 of this worksheet.)	15.
16. TTP on effective date of the FSS Contract of Participation or, in the case of vouchers, 30% of monthly Adjusted Annual Income on effective date of the FSS Contract of Participation (Enter amount from the FSS Contract of Participation.)	16.
17. Difference between current TTP and TTP on the effective date of the FSS Contract of Participation (Line 15 minus line 16. Enter 0 if negative.)	17.
18. Enter the lesser of line 14 or line 17.	18.
19. Applicable Very Low-Income Limit (Enter the current very low-income limit for the jurisdiction in which the FSS family is now living.)	19.
20. Amount by which the Adjusted Annual Income exceeds the Very Low-Income Limit (Line 3 minus line 19)	20.

21. 30% of the amount by which Adjusted Annual Income exceeds the Very Low-Income Limit (Line 20 divided by 40)	21.
22. Escrow credit (line 18 minus line 21)	22.

Appendix III

Section 10, line 10b: Mixed Family Flat Rent Worksheet

Complete this worksheet for mixed families that reside in Public Housing (1c = P). A mixed family is a family that includes both citizens/eligible immigrants and noncitizens/ineligible immigrants.

Public Housing Mixed Family Flat Rent Calculation

1. Flat rent		$ 1.	
2. Public Housing maximum rent		$ 2.	
3. Family maximum subsidy: line 2 minus line 1 (If negative or 0, there is no proration. Skip to line 7 and enter flat rent (line 1).)		$ 3.	
4. Total number eligible		4.	
5. Total number in family		5.	
6. Eligible subsidy: (line 3 ÷ line 5) X line 4		$ 6.	
7. Mixed family flat rent: line 2 - line 6	If positive, put mixed family prorated flat rent		$ 7.
	If negative or 0, copy flat rent from line 1		$ 7.

Instructions for Completing the Mixed Family Flat Rent Worksheet:

1. Flat rent:
The dollar amount of the full subsidy flat rent. Flat rent is set by the unit size and building. If a PHA uses the ceiling rent amount for flat rent, input the ceiling rent amount in this line.

2. Public Housing maximum rent:
The maximum rent that the PHA (owner) can charge for the unit. The Public Housing maximum rent is between $5 and $3,000 per year.

How do I calculate maximum rent?
To calculate the maximum rent, list the TTPs paid by all tenants in this unit's size in the PHA's jurisdiction from largest to smallest, and then take the TTP that falls at the 95th percentile. Do not take the average of all TTPs and then compute 95 percent of that average.
Example: If you have 100 TTPs and list them from largest to smallest, the 95th highest rent is the maximum rent, regardless of the TTP amount.

3. Family maximum subsidy: line 2 minus line 1:
The maximum amount of rent subsidy available to the family is Public Housing maximum rent (line 2) minus Flat rent (line 1). If the family maximum subsidy is negative or zero, there is no proration. Enter the flat rent from line 1 in line 7 of the worksheet and in line 10b of the form HUD-50058.

4. Total number eligible:
The total number of family members eligible for rent subsidy based on their citizen status. Family members do not include live-in aides or foster children/adults. Eligible family members have citizenship codes in line 3i of:
EC = Eligible citizen
EN = Eligible noncitizen
PV = Pending verification

5. Total number in family:
The total number of family members in the household. Include all family members, including ineligible noncitizen family members (3i = IN). Do not include live-in aides or foster children/adults.

6. Eligible subsidy: (line 3 ÷ line 5) X line 4:
The total amount of rent subsidy for which the family is eligible. Divide the family maximum

subsidy (line 3) by the total number in family (line 5). Multiply the result by the total number eligible (line 4).

Example: The family maximum subsidy (line 3) is $100 and the family consists of 4 members (line 5) of which 3 members are eligible for rent subsidy (line 4). The calculation reads ($100 ÷ 4) X 3 = $75. The family's eligible subsidy is $75.

7. Prorated flat rent: line 2 - line 6:

The mixed family flat rent for the unit is Public Housing maximum rent (line 2) minus the eligible subsidy (line 6).

What does it mean when the mixed family flat rent is a positive number?

If the Public Housing maximum rent (line 2) minus the eligible subsidy (line 6) results in a positive number, this line reflects the mixed family's prorated flat rent amount.

Example: The eligible subsidy (line 6) is $75, and the Public Housing maximum rent (line 2) is $600. The calculation reads**:** $600 - $75 = $525. The mixed family pays a prorated flat rent of $525.

What does it mean when the mixed family flat rent is a negative number or zero?

If the Public Housing maximum rent (line 2) minus the eligible subsidy (line 6) results in a negative number or zero, the mixed family's flat rent is not prorated. This family pays the flat rent amount.

Example: The eligible subsidy (line 6) is $450, and the Public Housing maximum rent (line 2) is $300. The calculation reads**:** $300 - $450 = - $150. Since the difference is negative, the mixed family pays the flat rent amount listed in line 1.

Where do I enter the information from line 7 of the Mixed Family Flat Rent Worksheet?

Enter the mixed family flat rent amount from line 7 in line 10b, Unit's flat rent, on the Form HUD-50058.

Appendix IV

PIC Form 50058 Glossary

Use this glossary as a reference document only. Refer to the Code of Federal Regulations (as referenced after each definition) and HUD Notices for official program descriptions and definitions.

1937 Act: the United States Housing Act of 1937.

Absorption: in voucher portability, the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA's Consolidated Annual Contributions Contract (ACC). (24 CFR 982.4)

Accessible units: units that meet the requirement of accessibility with respect to dwellings. (24 CFR 945.105)

Accessible: when used with respect to the design, construction, or alteration of a facility, or a portion of a facility other than an individual dwelling unit, so that the facility or portion of the facility can be approached, entered, and used by individuals with physical handicaps. The phrase "accessible to and usable by" is synonymous with accessible. (24 CFR 8.3)

Act: the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (24 CFR 5.100) Also see 1937 Act.

ADA: the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) (24 CFR 5.100)

Adjusted income: annual income (as determined by the responsible entity) of the members of the family residing or intending to reside in the dwelling unit, after making the applicable deductions. (24 CFR 5.611)

Administrative fee: Fee paid by HUD to the PHA for administration of the program. (24 CFR 982.4)

Administrative plan: the plan that describes PHA policies for administration of the tenant-based programs. (24 CFR 982.4)

Admission: the point when the family becomes a participant in a program. In a tenant-based program, the date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term). (24 CFR 982.4)

Annual Contributions Contract (ACC) (Indian Housing): a contract under the 1937 Act between HUD and an IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families. (24 CFR 1000.10) Also see 1937 Act.

Annual contributions contract (ACC): the written contract between HUD and a PHA, under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program. (24 CFR 5.403) Also see 1937 Act.

Annual income: all amounts, monetary or not, which: (1) Go to, or are on behalf of, the family head or spouse (even if temporarily absent) or any other family member; or (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and (3) Are derived (during the 12-month period) from assets to which any member of the family has access; (4) Are not specifically excluded. (24 CFR 5.609)

Applicant: a person or a family that has applied for housing assistance. (24 CFR 5.403)

Assisted lease (or lease): a written agreement between an Owner and a Family for the leasing of a unit by the Owner to the Family, with housing assistance payments under a Housing Assistance Payments Contract between the Owner and the PHA. (24 CFR 882.102)

Child care expenses: amounts anticipated to be paid by the family for the care of children under 13 years of age, during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent that such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income. (24 CFR 5.603)

Child: a member of the family other than the family head or spouse who is under 18 years of age.

Citizen: a citizen or national of the United States. (24 CFR 5.504)

Community service: the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities. (24 CFR 960.601)

Consent form: any consent form approved by HUD, to be signed by assistance applicants and participants for the purpose of obtaining income information from employers and State Wage Information Collection Agencys (SWICAs), return information from the Social Security Administration (including wages, net earnings from self-employment, and payments of retirement income), and return information for unearned income from the

Internal Revenue Service. Consent forms expire after a certain time and may authorize the collection of other information from assistance applicants or participants to determine eligibility or level of benefits. (24 CFR 5.100)

Continuously assisted: an applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to a certificate or voucher program. (24 CFR 982.4) Also see 1937 Act.

Contract of participation: a contract in a form approved by HUD, entered into between a participating family and a PHA operating an FSS program, that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans entered into between the PHA and all members of the family who will participate in the FSS program, and which plans are attached to the contract of participation as exhibits. (24 CFR 984.103)

Cooperative (includes mutual housing): housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. (24 CFR 982.4)

Covered families (for welfare benefit reduction): families who receive welfare assistance or other public assistance benefits (welfare benefits) from a State or other public agency (welfare agency) under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance. (24 CFR 5.615)

Department: the Department of Housing and Urban Development (HUD). (24 CFR 5.100)

Dependent: a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. (24 CFR 5.603)

Disability assistance expenses: reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source. (24 CFR 5.603)

Disabled family: a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides. (24 CFR 5.403)

Disallowance: exclusion from annual income. (24 CFR 960.255)

Earned income: income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by a PHA on behalf of a participating family. (24 CFR 984.103)

Economic enterprise: any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. Section 3 of the Indian Financing Act of 1974 (24 CFR 1000.48)

Economic self-sufficiency program: any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities. (24 CFR 5.603)

Effective date of FSS contract of participation: the first day of the month following the month in which the FSS family and the PHA entered into the contract of participation. (24 CFR 984.103)

EHPA: the Earned Home Payments Account. (24 CFR 982.401)

Elderly family: a family whose head, spouse, co-head or sole member is a person who is at least 62 years of age. (24 CFR 5. 403)

Elderly Person: an individual who is at least 62 years of age. (24 CFR 5.100)

Elevated blood lead level (EBL): excessive absorption of lead. Excessive absorption is a confirmed concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter) for a single test or of 15-19 ug/dl in two consecutive tests 3-4 months apart. (24 CFR 982.401)

Evidence of citizenship or eligible status: the documents, which must be submitted to evidence citizenship or eligible immigration status. (24 CFR 5.504)

Extremely low income family: A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. (24 CFR 5.603)

Family rent to owner: in the voucher program, the portion of rent to owner paid by the family. (24 CFR 982.4)

Family Self-Sufficiency (FSS) program: program to promote the development of local strategies to coordinate the use of public housing assistance and housing assistance under the voucher program with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency. (24 CFR 984.101)

Family share: the portion of rent and utilities paid by the family. (24 CFR 982.4)

Family unit size: The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards. (24 CFR 982.4)

Family: includes all household members except live-in aides and foster children and adults. Use the number of family members to calculate subsidies and payments. Family includes but is not limited to: (1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size); (2) An elderly family; (3) A near-elderly family; (4) A disabled family; (5) A displaced family; (6) The remaining member of a tenant family; and (7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family. (24 CFR 5. 403)

FSS account: the FSS escrow account (24 CFR 984.103)

FSS credit: the amount credited by the PHA to the participating family's FSS account. (24 CFR 984.103)

FSS family: a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation. (24 CFR 984.103)

FSS related service program: any program, publicly or privately sponsored, that offers supportive services. (24 CFR 984.103)

FSS slots: refers to the total number of public housing units or the total number of rental certificates or rental vouchers that comprise the minimum size of a PHA's respective Public Housing FSS program or Housing Chocie VoucherFSS program. (24 CFR 984.103)

Full-time student: a person who is attending school or vocational training on a full-time basis. (24 CFR 5.603)

FUP: Family Unification Program.The Housing Choice Voucher–FUP is designed to provide housing assistance to households whose lack of adequate housing is a primary cause of the separation or imminent separation of a child or children from their families. FUP accomplishes this by providing funding to public housing agencies that allocate the money to special housing choice vouchers for the families in danger of separation. Recipients of the vouchers must otherwise be eligible for the voucher program. The local public welfare agency must also certify that the lack of adequate housing is a primary reason that the family's child(ren) may be placed in out-of-home care or may be prevented from returning to the family.

Gross rent: the sum of contract rent to owner plus any utility allowance. (24 CFR 982.4, 24 CFR 882.102)

Group home: a dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). (24 CFR 982.4)

HAP contract: housing assistance payments contract. (24 CFR 982.4) Also see Housing assistance payment (HAP).

Head of household: the adult member of the family who is the head of the household for purposes of determining income eligibility and rent. (24 CFR 5.504)

Homeless family: A homeless family includes: (A) Any person or family that lacks a fixed, regular, and adequate nighttime residence; and (B) Any person or family that has a primary nighttime residence that is: (1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing); (2) An institution that provides a temporary residence for individuals intended to be institutionalized; or (3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

Homeowner: a family of which one or more members owns the title to the home. (24 CFR 982.401)

HOPE VI: the HOPE VI program was developed as a result of recommendations by National Commission on Severely Distressed Public Housing, which was charged with proposing a National Action Plan to eradicate severely distressed public housing. The Commission recommended revitalization in three general areas: physical improvements, management improvements, and social and community services to address resident needs.

Household: includes everyone who lives in the unit, including foster children/adults and live-in aides. Household members are used to determine unit size.

Housing agency (HA): a state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (Also referred to as a Public Housing Agency or PHA.) (24 CFR 5.100)

Housing assistance payment (HAP): the monthly assistance payment by a PHA, which includes a payment to the owner for rent owed to the owner under the family's lease; and an additional payment to the family if the total assistance payment exceeds the rent to owner. (24 CFR 982.4)

Housing quality standards (HQS): the HUD minimum quality standards for assisted housing under the tenant-based programs. (24 CFR 982.4)

Imputed welfare income: the amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Indian Housing Authority (IHA): an entity that is authorized to engage or assist in the development or operation of low-income housing for Indians under the 1937 Act; and is established: (1) by exercise of the power of self government of an Indian tribe independent of state law; or (2) by operation of state law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska. (24 CFR 1000.10)

Individual training and services plan: a written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the PHA in consultation with the family member, and which sets forth the supportive services to be provided to the family member, the activities to be completed by that family member;

and the agreed upon completion dates for the services and activities. Each individual training and services plan must be signed by the PHA and the participating family member, and is attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family. (24 CFR 984.103)

Initial PHA: in Housing Choice Voucher portability, the term refers to both a PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA, and a PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA. (24 CFR 982.4)

IRS: the Internal Revenue Service. (24 CFR 5.100)

Jurisdiction: the area in which the PHA has authority under State and local law to administer the program. (24 CFR 982.4)

Lease: a written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA. In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA. (24 CFR 982.4)

Live-in aide: a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) Is determined to be essential to the care and well-being of the persons; (2) Is not obligated for the support of the persons; and (3) Would not be living in the unit except to provide the necessary supportive services. (24 CFR 5. 403)

Low income family: a family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes. (24 CFR 5.603)

Manufactured home: a manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the Housing Quality Standards (HQS). (24 CFR 982.4)

Manufactured home space: in manufactured home space rental, a space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. (24 CFR 982.4)

Medical expenses: Medical expenses, including medical insurance premiums, anticipated during the period for which annual income is computed, and not covered by insurance. (24 CFR 5.603)

Minority: means any individual who is included within any one of the following racial and ethnic categories: (1) American Indian or Alaskan Native--a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; (2) Asian or Pacific Islander--a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; (3) African-American--a person having origins in any of the black racial groups of Africa; and (4) Hispanic--a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race. (24 CFR 81.2)

Mixed family: a family whose members include those with citizenship or eligible immigration status, as well as those without citizenship or eligible immigration status. (24 CFR 5.504)

Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals: rehabilitation involving a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to upgrade to decent, safe, and sanitary conditions to comply with the Housing Quality Standards (HQS) or other standards approved by HUD, from a condition below those standards (improvements being of a modest nature and other than routine maintenance). (24 CFR 882.802)

Moderate rehabilitation: rehabilitation involving a minimum expenditure of $1000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to upgrade to decent, safe and sanitary conditions to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below these standards (improvements being of a modest nature and other than routine maintenance) or to repair or replace major building systems/components in danger of failure. (24 CFR 882.102)

Monthly adjusted income: one twelfth of adjusted annual income. (24 CFR 5.603)

Monthly income: one twelfth of annual income. (24 CFR 5.603)

Mutual Help Occupancy Agreement (MHOA): a lease with option to purchase contract between an IHA and a homebuyer under the 1937 Act. (24 CFR 1000.302)

MSA: a metropolitan statistical area. (24 CFR 5.100)

MTCS: means Multifamily Tenant Characteristics System. It was the forerunner of the PIC system.

National: a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession. (24 CFR 5.504)

Net family assets: (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (24 CFR 5.603)

Noncitizen: a person who is neither a citizen nor national of the United States. (24 CFR 5.504)

Non-elderly disabled person: a person with a disability who is less than 62 years of age. (24 CFR 945.105)

Office of Native American Programs (ONAP): the office of HUD, which has been delegated authority to administer programs for Native Americans. An Area ONAP is an ONAP field office. (24 CFR 1000.10)

Officer: a professional police officer or other professional security provider. Police officers and other security personnel are considered professional if they are employed full time, i.e., not less than 35 hours per week, by a governmental unit or a private employer and compensated expressly for providing police or security services. (24 CFR 960.503)

OMB: the Office of Management and Budget. (24 CFR 5.100)

Over-income family: a family that is not a low income family. (24 CFR 960.102) Also see low income family.

Owner: the person or entity (or employee of an owner) that leases an assisted dwelling unit to an eligible family and includes, when applicable, a mortgagee. (24 CFR 5.100)

Participant (participant family): a family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term). (24 CFR 982.4)

Participant: for Section 8 of the 1937 Act, a family receiving rental assistance under the program. For the public housing program a family or individual that is assisted under the program. (24 CFR 5.100)

Payment standard: the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family). (24 CFR 982.4)

Person with disabilities: a person who has a disability, as defined in (A) 42 U.S.C. 423 and is determined to have a physical, mental, or emotional impairment that is expected to (1) be of long-continued and indefinite duration, (2) substantially impede his or her ability to live independently, and (3) be of such a nature that the ability to live independently could be improved by more suitable housing conditions, or (B) has a developmental disability as defined in 42 U.S.C. 6001. This definition includes persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. For purposes of qualifying for low-income housing, it does not include a person whose disability is based solely on any drug or alcohol dependence; and means “individual with handicaps”, for purposes of reasonable accommodation and program accessibility for persons with disabilities. (24 CFR 5.403)

PHA: a Housing Authority--either a Public Housing Agency (PHA) or an Indian Housing Authority (IHA). (24 CFR 984.103)

PHRA: stands for Public Housing Reform Act.

PIC: stands for Public and Indian housing information center. PIC was designed to facilitate a more timely and accurate echange of data between PHAs and local HUD offices by allowing the PHAs to submit information to HUD over the Internet.

Police officer: a person employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments. (24 CFR 5.661)

Portability: renting a dwelling unit with tenant-based voucher assistance outside the jurisdiction of the initial PHA. (24 CFR 982.4)

Previously unemployed: a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage. (24 CFR 960.255)

Private space: in shared housing: The portion of a contract unit that is for the exclusive use of an assisted family. (24 CFR 982.4)

Project-based assistance: The subsidy is attached to the unit.

Project owner: The person or entity that owns the housing project containing the assisted dwelling unit. (24 CFR 5.504)

Public Housing Agency (PHA): any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

Public Housing programs: the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the United States Housing Act of 1937. (24 CFR 5.306)

Public housing: housing assisted under the 1937 Act, other than under Section 8. Public housing includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance. (24 CFR 5.100)

Reasonable rent: a rent to owner that is not more than rent charged for comparable units in the private unassisted market and for comparable unassisted units in the premises.

Receiving PHA: in voucher portability, a PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family. (24 CFR 982.4)

Rent to owner: the total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for. (24 CFR 982.4)

ROSS: Resident Opportunities and Self Sufficiency Program links services to Public and Indian housing residents by providing grants for supportive services, resident empowerment activities and activities to assist residents in becoming economically self-sufficient.

Section 8: section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). (24 CFR 5.100)

Security personnel means: A police officer, or a qualified security professional, with adequate training and experience to provide security services for project residents. (24 CFR 5.661)

Self-sufficiency: that an FSS family is no longer receiving voucher, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (24 CFR 984.103)

Service provider: a person or organization qualified and experienced in the provision of supportive services, and that is in compliance with any licensing requirements imposed by state or local law for the type of service or services to be provided. The service provider may provide the service on either a for-profit or not-for-profit basis. (24 CFR 945.105)

Service requirement: the obligation of each adult resident, other than an exempt individual, to perform community service or participate in an economic-self sufficiency program required in accordance with Sec. 960.603. (24 CFR 960.601)

Shared housing: a unit occupied by two or more families where at least one of the families is assisted. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. (24 CFR 982.4)

Single person: a person who lives alone or intends to live alone, who is not an elderly person, a person with disabilities, a displaced person, or the remaining member of a tenant family. (24 CFR 945.105)

Single room occupancy housing (SRO): a unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. (24 CFR 982.4)

Social Security Number (SSN): the nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary. (24 CFR 5.100)

Special admission: admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position. (24 CFR 982.203)

Specified welfare benefit reduction: a reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program. (24 CFR 5.615)

SSA: the Social Security Administration. (24 CFR 5.100)

SSI: means Supplemental Security Income.

Subsidy standards: standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions. (24 CFR 982.4)

Supportive services (FSS Family): those appropriate services that a PHA will make available, or cause to be made available to an FSS family under a contract of participation. (24 CFR 984.103)

Suspension: stopping the clock on the term of a family's voucher, for such period as determined by the PHA, from the time when the family submits a request for PHA approval of the tenancy, until the time when the PHA approves or denies the request. (24 CFR 982.4)

Tenant rent: the amount payable monthly by the family as rent to the unit owner (r or PHA in public housing). (This term is not used in the voucher program.) (24 CFR 5.603)

Tenant: an individual or a family renting an assisted dwelling unit. (24 CFR 5.504)

Tenant: the person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit. (24 CFR 982.4)

TIN: Tax Identification Number.

Unit size or size of unit: the number of bedrooms in a dwelling unit. (24 CFR 984.103)

USCIS: The Bureau of U.S. Citizenship and Immigration Services, formerly the Immigration and Naturalization Service (INS). (24 CFR 5.504)

Utility allowance: if the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, utility allowance is an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. (24 CFR 5.603)

Utility reimbursement (certificates, income based public housing): the amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (24 CFR 5.603)

Utility reimbursement (vouchers): in the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner. (24 CFR 982.4)

Very low income family: a family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. (24 CFR 5.603)

Voucher (rental voucher): a document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program. (24 CFR 982.4)

Voucher holder: a family holding a voucher with an unexpired term (search time). (24 CFR 982.4)

Waiting list admission: an admission from the PHA waiting list. (24 CFR 982.4)

Welfare assistance: income assistance from Federal or State welfare programs, and includes assistance provided under the Temporary Assistance to Needy Families (TANF) Program, Supplemental Security Income (SSI) that is subject to an income eligibility test; Medicaid, food stamps, general assistance, or other assistance provided under a Federal or State program directed to meeting general living expenses, such as food, health care, child care, but does not include assistance solely directed to meeting housing expenses, and does not include transitional welfare assistance provided to JOBS participants. (24 CFR 984.103)

Welfare assistance: welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments. (24 CFR 5.603)

Welfare-to-work (WtW) families: families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WtW funding for the same purpose). (24 CFR 982.4)

What sections of the Form do I fill out for each action type?
Use the following chart to help you determine which sections of the Form to fill out for each action type.

Required 50058 Sections by Action Type

Section / Action Type	1: Agency	2: Action	3: Household	4: Background at Admission	5: Unit to be Occupied	6: Assets	7: Income	8: Deductions	9: TTP	10, 11, 12, 13, or 15: Rent Calculation	17: FSS/WtW
1: New Admission	√	√	√	√	√	√	√	√	√	√	Optional
2: Annual Reexam	√	√	√	No	√	√	√	√	√	√	Optional
3: Interim Reexam	√	√	√	No	√	√	√	√	√	√	Optional
4: Portability Move-in	√	√	√	No	√	√	√	√	√	√	Optional
5: Portability Move-out	√	√ (Partial)	√ (HOH only)	No	No	No	No	No	No	No	No
6: End Participation	√	√ (Partial)	√ (HOH only)	No	No	No	No	No	No	No	Optional
7: Other Change of Unit	√	√	√	No	√	√	√	√	√	√	Optional
8: FSS/WtW Addendum Only	√	√ (Partial)	√ (HOH only)	No	No	No	No	No	No	No	√
9: Annual Reexam Searching	√	√	√	No	No	√	√	√	√	No	Optional
10: Issuance of Vouchers	√	√ (Partial)	√	√ (4b, 4c only)	No	No	No	No	No	No	No
11: Expiration of Voucher	√	√ (Partial)	√ (HOH only)	No	No	No	No	No	No	No	No
12: Flat Rent Annual Update	√	√	√	No	√	No	No	No	No	No	Optional
13: Annual HQS Inspection Only	√	√ (Partial)	√ (HOH only)	No	√ (5h, 5i only)	No	No	No	No	No	No
14: Historical Adjustment	√	√	√	Optional	Optional	Optional	Optional	Optional	Optional	Optional	Optional
15: Void	√	√ (Partial)	√ (HOH only)	No	No	No	No	No	No	No	No

What section of the Form do I complete to determine the family's rent?

The following table indicates which of the sections of the form should be completed when calculating rent, based on the program type and the housing type or participation in other special programs.

Rent Calculation Sections

Program	Housing Type or Special Program Participation	Rent Section
Public Housing (line 1c=P)	Income based Rent	10
	Flat Rent	10
Sec 8 Certificates (line 1c=CE)	Project-based Certificate Assistance	11
Sec 8 Vouchers (line 1c=VO)	Project-based Voucher Assistance	11
	Tenant-based Vouchers	12
	Homeownership Vouchers	15
Sec 8 Mod Rehab (line 1c=MR)	All	13