

# SEMAP Self-Assessment

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# *Introduction*

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## **ONLINE RESOURCES**

Additional resources and references for this course are available at <http://NMAreferences.com>. Click the specific program link at the top of the web page to jump directly to the references you wish to access. No login information is required.

## **HOW TO USE THIS WORKBOOK**

### **Why the Workbook was Developed**

- This SEMAP Self-Assessment Workbook has been prepared to provide practical guidance to Public Housing Agencies (PHAs) in conducting a self-assessment of their compliance with the SEMAP regulations.
- It contains a set of tools PHAs can use to evaluate their compliance with each indicator, as follows:
  - A review of the requirements for each SEMAP indicator
  - Data-gathering forms for each indicator
  - Checklists the PHA can use to evaluate their compliance with each indicator
  - A sample SEMAP scoring sheet
  - A problem-solving form which can be used to evaluate deficiencies and set up an action plan to improve scores.

## How the Self-Assessment Works

We suggest that the PHA go through the following series of steps:

1. Read Chapter 1, the SEMAP Process overview, to understand why HUD instituted SEMAP and how the SEMAP regulations are applied.
2. Determine which PHA departments oversee HCV program functions where outcomes are scored under SEMAP and ensure their understanding of SEMAP indicators and how the indicators are scored.
3. Determine who will be responsible for scoring each self-scored indicator and ensure they understand the indicator thoroughly.
4. Determine for each PHA-scored indicator what source documents will be used to conduct the required reviews.
5. Ensure data collections forms correctly capture the information needed to properly score the indicator and to provide a solid audit trail to show the indicator was properly scored.
  - PHAs may use the SEMAP Data-Gathering Forms provided in this workbook, Chapter 2, to collect data for Indicators 1-7, and to establish a current score on Indicator 8 or may use the electronic workbook provided with NMA's formal SEMAP course.
6. Log on to HUD's PIH Inventory Management System/Public Information Center (IMS/PIC) monthly to review fiscal year-to-date SEMAP scores for Indicators 9-12, and Indicator 14, if it applies to the PHA.
7. Utilize HUD's Two-Year-Tool (TYT) to determine the PHA's projected score for Indicator 13.
8. Establish a SEMAP records system compiled of records for each SEMAP period which includes SEMAP requirements, the PHA's overall SEMAP score, and audit files for each PHA-scored indicator, storing source documentation and scoring information to support how each indicator was scored in the file.
9. Calculate the PHA's anticipated SEMAP Score.
  - a. Determine the PHA's anticipated rating and points for each indicator, being brutally honest.
  - b. Determine the total possible points for the PHA (Indicators 7, 14a and 14b do not apply to all PHAs).
  - c. Add up the total anticipated points and divide by the total possible points to determine the anticipated SEMAP score for the PHA.

10. For problem indicators, complete the checklists included in the workbook to determine root causes of issues.
11. Use the Problem Solving Process and problem-solving forms in Chapter 3 to complete an Action Plan for each indicator needing improvement.
12. Update the PHA's administrative plan policy as necessary for any indicators which require policy development and shepherd the policy through the steps to gain board approval.
13. Train all staff on SEMAP so that front-line staff understand how their daily work impacts the PHA's SEMAP score.
14. Continue ongoing monitoring of the indicators to ensure requirements are met.

Visit our Website at <http://www.nanmckay.com> or call 800-783-3100 for information regarding SEMAP courses.



## **CHAPTER 1     SEMAP Overview**

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### **Section 1     Introduction**

#### **TERMINOLOGY**

- PIH – Public and Indian Housing Division of HUD
- SEMAP – Section 8 Management Assessment Program
- IMS/PIC – Information Management System / Public & Indian Housing Information Center
- VMS – Voucher Management System
- TYT – HUD’s Two-Year Tool

#### **HUD METHODS OF MEASURING PHA SECTION 8 PERFORMANCE**

- IMS/PIC
- SEMAP
- Independent auditor reports
- HUD financial document reviews
- On-site reviews: HQS and fair housing or other
- Participant complaints

#### **PURPOSE OF SEMAP**

- SEMAP was created to:
  - Assist HUD in objectively measuring PHA performance in key areas
  - Provide HUD with procedures to identify management capabilities/deficiencies
  - Serve as a self-assessment tool for PHAs

## SEMAP WEBSITE

- [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/semap](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/semap) [**Note:** as of 4/22/25, this link was not active as HUD was undergoing a website redesign. The link is provided in the event HUD reinstates the webpage.}]
  - Fact sheets
  - Notices
  - Forms
  - Links

## HUD SEMAP TRAINING

- <https://www.hudexchange.info/trainings/semap-training-for-PHA-staff/>
- Five modules:
  - Module 1: Introduction
  - Module 2: Overview of SEMAP Indicators
  - Module 3: Intake and Eligibility
  - Module 4: Leasing
  - Module 5: HQS SPV, VMS and Modules Summary

## SEMAP

- SEMAP regulations are found at 24 CFR Part 985
- A SEMAP certification based on the 14 Key Performance Indicators and the bonus indicator must be completed:
  - Annually by each PHA with 250 or more assisted units
  - Biennially by each nontroubled PHA with less than 250 assisted units
- Based on the certification and PIC data, HUD will assign each PHA a rating.
- Scoring year coincides with a PHA's fiscal year.



## Key Performance Indicators

Indicator	Possible Points
1 Waiting list	15
2 Reasonable Rent	20
3 Adjusted Income	20
4 UA Schedule	5
5 HQS QC	5
6 HQS Enforcement	10
7 Expanding Housing	5
8 Payment Standards	5
9 Annual Reexams	10
10 Correct Tenant Rent	5
11 Precontract HQS	5
12 Annual HQS	10
13 Leaseup	20
14 FSS	10

## SEMAP CERTIFICATION

- Certification is due within 60 calendar days of the fiscal year end (FYE).
  - “60 days” does not mean two months.
- A PHA may submit a request to HUD to submit their certification after the deadline.
  - Must provide supporting information and documentation.
  - If approved, the PHA will be required to work with their PIC coach to ensure timely submission by the new deadline.
- 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.

- A PHA that subcontracts administration of its program to one or more subcontractors shall require each subcontractor to submit their own SEMAP certification on the HUD form to the PHA.
  - The PHA retains the subcontractor certification for three years.
- Not certifying timely triggers an automatic “troubled” rating.

### ***The PHA Profile***

- The ratings make up the PHA Profile. The profile contains:
  - Points earned for each indicator
  - Total points earned
  - Percentage of points earned of maximum possible points
  - An overall rating

### ***Percentage Score***

- Total points earned
- Divide by total points that apply to your PHA
  - High performer            90%+
  - Standard performer      61-89%
  - Troubled performer      60% or less
- High performing PHAs may be given competitive advantage under notices of fund availability.

## **Section 2 The SEMAP Process**

### **STEP 1. PHA ASSESSES ITS OWN PERFORMANCE FOR INDICATORS 1-7 AND SUBMITS CERTIFICATION TO HUD**

#### **SEMAP Certification and Ratings**

- SEMAP ratings are assigned based on PHA certifications, IMS/PIC data, VMS submissions, field office review and audit reports
  - Ratings for indicators 1-7 will initially be based directly on what the PHA reports on its SEMAP certification
- PHA submits certification online, based on required reviews
  - PHAs are required to complete their SEMAP certifications and submit them online through HUD's IMS/PIC SEMAP module within 60 calendar days after the end of the PHA's fiscal year.
  - HUD field office staff will use the PIC SEMAP module as a tracking mechanism to ensure that PHAs in their jurisdictions submit their SEMAP certifications in a timely manner.
  - If a HUD field office becomes aware of a PHA administrative error or a system functionality issue that prevents submission of the PHA's certification, the field office must work with the PHA.
  - The field office will be required to work together with the PHA, REAC TAC (Technical Assistance Center) and IMS/PIC HELP to ensure that the PHA's certification is received in a timely manner.
  - Sixty calendar days following the fiscal year end, IMS/PIC will run an overnight process which will establish a zero rating profile for each PHA that failed to submit its certification.
    - Generally, PIC SEMAP will not be reopened to permit PHA submission of SEMAP certifications once the system cutoff date has been reached.
    - PHAs that did not submit the required SEMAP certifications within 60 days of their fiscal year end will be rated as troubled and subject to 24 CFR 985.107 requirements.

### **PHAs Required to Certify but Not Rated**

- Small PHAs expending less than \$500,000 annually and not subject to the Single Audit Act must certify for all indicators that apply but will not be rated on indicators 1–7.
- Small PHAs with less than one full year of program operations must certify for all indicators that apply but will not be rated at all.
- MTW (Moving-to-Work) PHAs must certify in accordance with their MTW agreements.

### **Biennial SEMAP Certifications**

- HUD shall assess and score the performance of small PHAs (less than 250 assisted units) once every other PHA fiscal year, unless:
  - The PHA elects to have its performance assessed on an annual basis, or
  - Is designated as troubled
- If a PHA submits a certification in an exempt year, it will be scored.

## **STEP 2. HUD CREATES A SEMAP PROFILE AND PROVIDES PHA WITH RATING**

- HUD completes SEMAP profile and rating
- Notification is generated through IMS/PIC
- SEMAP rating report is reviewed online
- The rating profile shows each factor and points assigned

## Rating Profile

- Comes from PHA certification (subject to modification, based on audit)

1	Waiting list	15	
2	Reasonable Rent	20	
3	Adjusted Income	20	
4	UA Schedule	5	
5	HQS QC	5	
6	HQS Enforcement	10	
7	Expanding Housing	5	
8	Payment Standards	5	FO
9	Annual Reexams	10	IMS/PIC
10	Correct Tenant Rent	5	IMS/PIC
11	Precontract HQS	5	IMS/PIC
12	Annual HQS	10	IMS/PIC
13	Leaseup	20	VMS
14	FSS	10	FO/PIC

$$\frac{\text{Total Points Earned}}{\text{Total Possible Points}} = \frac{145}{145} = 100\% \text{ Overall Score}$$

Overall SEMAP Rating = High Performer

- HUD must notify PHAs in writing no later than 120 calendar days after the PHA's fiscal year end of its score on individual indicators, its overall SEMAP score, and its overall performance rating (high performer, standard, troubled).
- HUD will identify any indicator with a zero rating on any indicator and require correction within 45 calendar days of the notice.

Section 2 The SEMAP Process

- If the PHA doesn't send a written correction report within 45 days, the PHA must submit a corrective action plan within 30 calendar days.
  - The HUD field office will determine whether the report or plan is acceptable.
- When a nontroubled PHA fails the Expanding Housing Opportunities Indicator, the HUD office must notify the local Office of Fair Housing and Equal Opportunity (FHEO) of this deficiency

**STEP 3. HUD MAY MODIFY RATING BASED ON AUDIT REPORT**

- As part of the Single Audit Act, independent auditors should focus on program compliance for the first seven indicators and the bonus indicator.
- The auditor's role is to verify the accuracy of the PHA's SEMAP certification.
- The annual audit report must be submitted to HUD within nine months of the PHA's fiscal year end.
- HUD uses audit reports to verify the PHA's certification.
- Upon receipt of the report, the HUD field office will determine whether the report indicates that the PHA's certification on indicators 1-7 was accurate or inaccurate.
- The HUD field office must modify a rating on indicators 1-7 if the audit report shows a different level of performance than the PHA reported on the certification.

Section 2 The SEMAP Process

- For example, the below PHA certified to receiving the maximum points possible on indicators 1-7. The auditor's report shows differently:

Waiting list	15	0	<98% compliance
Reasonable Rent	20		
Adjusted Income	20		
UA Schedule	5	0	Didn't adjust based on 10% heating oil rate change

- New rating profile

$$\frac{\text{Total Points Earned}}{\text{Total Possible Points}} = \frac{125}{145} = 86\% \text{ Overall Score}$$

Overall SEMAP Rating = Standard

- If HUD modifies the PHA's SEMAP score based on the audit report, the field office must explain the reasons for the modification.
- HUD may also modify the overall SEMAP rating when warranted by circumstances that have a bearing on the SEMAP indicators, including but not limited to:
  - Adverse litigation
  - Fair Housing/equal opportunity compliance concerns
  - Fraud or misconduct
  - OIG audit or SEMAP on-site or confirmatory review
  - RIM review findings
- HUD will automatically assign an overall SEMAP rating of "troubled" if the last audit report indicates that the auditor is unable to provide an opinion on the PHA's financial statements.



## **STEP 4. PHA APPEAL OF THE RATING**

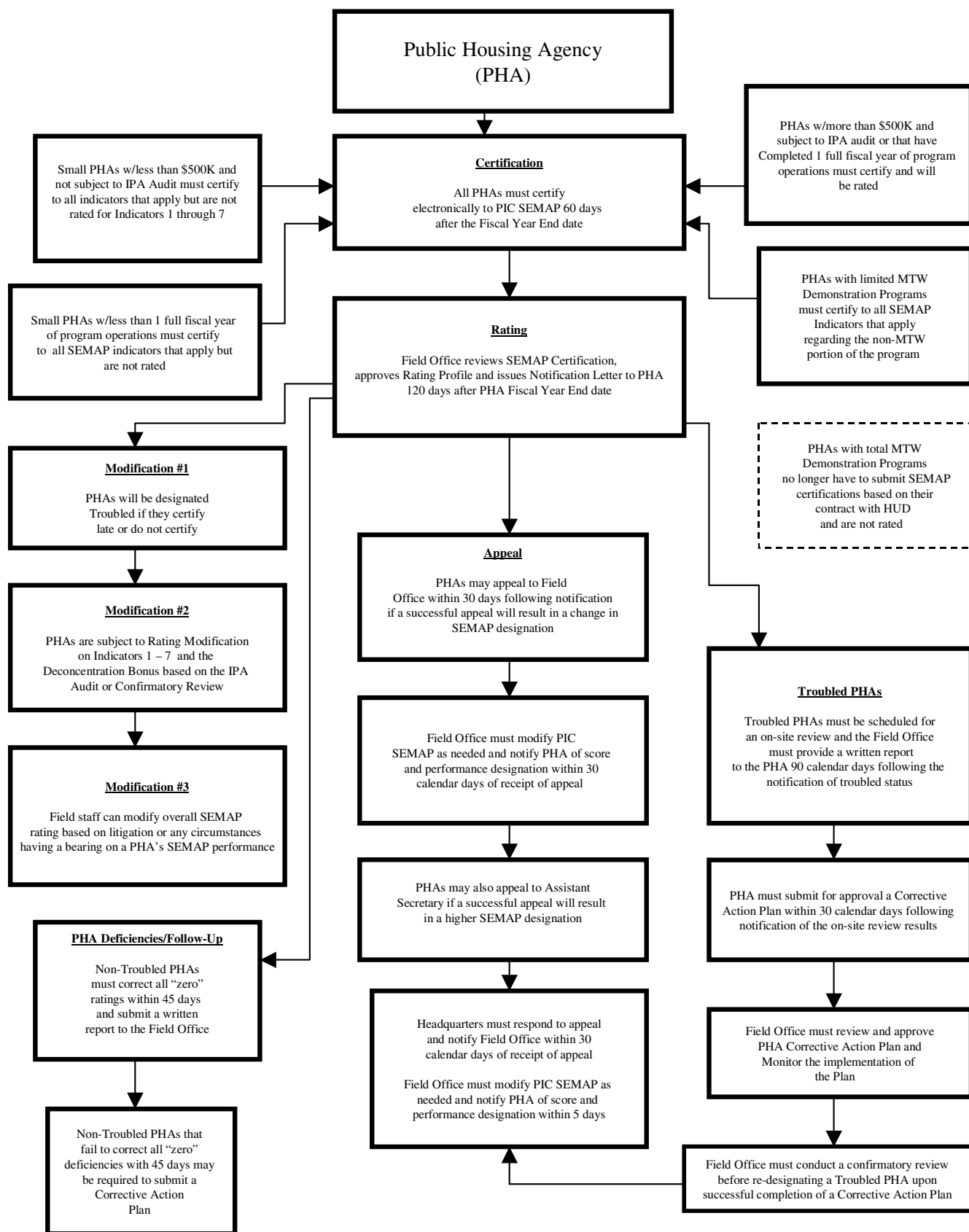
- A PHA may appeal its overall performance rating by providing justification of the reasons for its appeal to the HUD field office.
- The appeal must be made within 30 days after notification of the SEMAP score.
- A PHA may only appeal a rating profile that will result in a change of the overall designation. For example, *Troubled to Standard* or *Standard to High Performer*.
  - HUD must perform an onsite confirmatory review before changing any rating from *Troubled to Standard* or to *High Performer*.
  - Must be onsite for large PHAs
  - May be onsite for small PHAs (<250 units)
- HUD field offices must accept or deny the appeal and notify the PHA in writing of its decision within 30 days following the PHA submission of the appeal
- If the HUD field office denies the PHA's appeal, the PHA may appeal to the Assistant Secretary for PIH.
  - PHAs must submit their appeal within 30 days following denial by the HUD field office.
  - Headquarters will make a final determination and notify the field office within 30 days.
  - The field office must notify the PHA of the final determination within 10 days following the receipt of Headquarters' determination.

## **STEP 5. REQUIRED ACTIONS FOR TROUBLED PHAS**

- For PHAs that are designated troubled, the HUD field office must conduct a review to determine the seriousness and magnitude of PHA noncompliance.
- For PHAs that have 250 or more assisted units, the review must be conducted on site.
- For PHAs that have fewer than 250 assisted units, HUD may decide that an onsite review is unnecessary to determine the actions required to address program deficiencies.
- A report of findings must be provided to PHAs listing the findings of program management deficiencies, the apparent reasons for the deficiencies, and recommendations for improvement.
- PHAs must submit a corrective action plan to the HUD field office for review and approval.
- The corrective action plan must:
  - Specify goals to be achieved;
  - Identify obstacles to goal achievement and ways to eliminate or avoid them;
  - Identify resources that will be used or sought to achieve goals;
  - Identify a PHA staff person with lead responsibility for completing each goal;
  - Identify key tasks to reach each goal;
  - Specify time frames for achievement of each goal, including intermediate time frames to complete each key task; and
  - Provide for regular evaluation of progress toward improvement.
- The corrective action plan must 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.
- The PHA and HUD must monitor the PHA's implementation of its corrective action plan to ensure performance targets are met.

## SEMAP PROCESS & EVENT FLOW CHART

(from Notice PIH 2002-27)



## **PREPARING FOR SEMAP**

### **Monitor Indicators Not Scored through Self-Certification Monthly**

- Each month, log into the IMS/PIC SEMAP module and review the fiscal year-to-date status of the indicators scored through form HUD-50058 submissions
  - If there are any issues, click the + sign and obtain the list of problem files
    - Review and problem solve
- Update and review HUD's Two-Year-Tool (TYT) each month to determine scoring under the Lease-up Indicator
  - Ensure leasing plans are in place to achieve maximum possible points
- When payment standards are updated, ensure they are within the HUD-required basic range

### **Prepare with a Preliminary Mock-SEMAP Audit on PHA-scored Indicators**

- If there is time, don't wait until it is time to submit your SEMAP certification to certify to HUD
- Some problems will take longer to solve
- Some problems involve more than one department of an agency

### **Organizational Structure**

- Identify functional areas within your agency that affect each indicator.
- Determine which overlap.
- Assign overlapping indicators to all applicable personnel.

### **Conduct a Self-Assessment**

- Conduct supervisory quality control audit on required indicators.

### **Audit Files**

- Make up 15 (plus bonus if applicable) file folders.
  - One general file folder (random methodology)
  - One file folder for each indicator
- Files may be paper, electronic, or a combination of both.

### **Internal Audit Files — Contents**

- Description of indicator and performance standard
  - Use the SEMAP Indicators chart at the back of this chapter.
- Source documents reviewed
- Scoring sheets and tabulations
- Any other “proof” of certification score
- Use auditor minimum file sample and increase sample if needed
  - This only applies to PHAs with a large minimum required sample size.

### **Considerations for Each Indicator**

- Compliance requirement
- Audit objectives
- Suggested procedures for audit
- Audit file documentation
- Administrative practices and procedures
- Staff communication/reporting
- Quality assurance

## Section 3 PHA Supervisory Audits

### SUPERVISORY QC REVIEWS

- Annual or biennial (as appropriate) samples of files/records
- Drawn in unbiased manner (leave clear audit trail)
- Reviewed by a supervisor or qualified person other than the person who did the work
- Objective: to determine compliance with indicator

### First Seven SEMAP Indicators (\*indicates PHA audit needed)

Selection from Waiting List*	15
Reasonable Rent*	20
Determination of Adjusted Income*	20
Utility Allowance Schedule	5
HQS Quality Control Inspections*	5
HQS Enforcement*	10
Expanding Housing Opportunities	5

### Audit Sample Selection

- Instructions for type of files to be pulled are provided in each indicator.
  - Example: Selection from Waiting List
    - Two separate reviews are completed
      - One review from families that reached the top of the waiting list (were selected from the waiting list) during the PHA's fiscal year.
      - One review from families admitted to the program during the PHA's fiscal year.

### Size of Universe

- The minimum required file sample size is determined by a "universe" established in regulations.
- The universe is different for each indicator.

## 24 CFR 985.3 Definitions

- 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.

## Audit Sample Selection

50 or less	5
51-600	5 + 1 for each 50 (or part of 50) over 50
601-2000	16 + 1 for each 100 (or part) over 600
Over 2000	30 + 1 for each 200 (or part) over 2000

## Minimum Files Example

- Minimum files to be reviewed for Indicator 1 are based on number of new admissions per fiscal year. For example, if the PHA admitted 260 families during its fiscal year:

Minimum # of files to audit?

# of files which must meet criteria to receive 15 points (98% must be corrected)?


**File Sampling—A Random Approach**

- Software random generator
- Excel random generator function
- Random.org
  - Integer Set Generator
  - Creates a set of non-repeating integers
- Whatever your methodology, maintain clear audit records that prove you followed your random selection policy.

***Example (based on Random.org):***

- The number of files to be reviewed for Indicator 1 is based on the number of admissions during the PHA's fiscal year.
- Two samples are to be pulled for review:
  - One sample from all families admitted to the program
  - One sample from all families that reached the top of the waiting list

The below example is selecting files from families admitted to the program:

1. Obtain a list of all families admitted to the program during the FY, numbered.
  - Based on the previous example, let's use 260
2. Determine the minimum number of files required to be reviewed.
  - Based on 260, 10 files
3. Go to Random.org, scroll down to "FREE services, Numbers" and select Integer Set Generator
  - Enter: Generate 1 set with 10 unique random integers in each.
  - Each integer should have a value between 1 and 260 (both inclusive)
4. Print the page, then select "Get Sets"
5. Print the page with the selected numbers
6. Highlight (or circle) each identified family on your admissions list
7. File the two Random.org printouts and the admissions list with SEMAP records for Indicator 1



SEMAP INDICATORS - FINAL RULE AS AMENDED		
Performance Indicator	PHA Response / How Verified	Rating
<b>1. Selection from the Waiting List.</b> 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)) (Enter Yes or No)	Y or N PHA supervisory audit verified by IA annual audit report & confirmatory review if performed	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. PHA's SEMAP certification does not support the statement above. 0 points.
<b>2. Reasonable Rent.</b> 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; and at the HAP contract anniversary if there is a 5 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). (Enter Yes or No)	Y or N PHA supervisory audit verified by IA annual audit report & confirmatory review if performed	PHA's SEMAP certification states that: (A) The PHA has and implements a reasonable written method to determine and document 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 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 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points. PHA's SEMAP certification includes the statements above, except that the PHA documents its determination of reasonable rent for only 80 to 97 percent of units. 15 points. PHA's SEMAP certification does not support the statements above. 0 points.

SEMAP INDICATORS - FINAL RULE AS AMENDED		
Performance Indicator	PHA Response / How Verified	Rating
<b>3. Determination of Adjusted Income.</b> 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) (Enter Yes or No)	Y or N PHA supervisory audit verified by IA annual audit report & confirmatory review if performed	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. PHA's SEMAP certification includes the statements above, except that all items done for only 80 to 89 percent of families. 15 points. PHA's SEMAP certification does not support the statements above. 0 points.
<b>4. Utility Allowance Schedule.</b> This indicator shows whether the PHA maintains an up-to-date utility allowance schedule. (24 CFR 982.517) (Enter Yes or No)	Y or N PHA SEMAP certification verified by annual audit report & confirmatory review if performed	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. The PHA's SEMAP certification does not support the statement in paragraph (d)(3)(i) of this section. 0 points.
<b>5. HQS Quality Control Inspections.</b> 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, for quality control of HQS inspections. (24 CFR 985.2) 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))(Enter Yes or No)	Y or N PHA QC audit verified by IA annual audit report & confirmatory review if performed	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. 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. PHA's SEMAP certification does not support the statements above. 0 points.

SEMAP INDICATORS - FINAL RULE AS AMENDED		
Performance Indicator	PHA Response / How Verified	Rating
<p><b>6. HQS Enforcement.</b> 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)</p> <p>(Enter Yes or No)</p>	<p>Y or N</p> <p>PHA supervisory audit verified by IA annual audit report &amp; confirmatory review if performed</p>	<p>PHA's SEMAP certification states that:</p> <p>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.</p> <p>PHA's SEMAP certification does not support the statement above. 0 points.</p>

SEMAP INDICATORS - FINAL RULE AS AMENDED		
Performance Indicator	PHA Response / How Verified	Rating
<p><b>7. Expanding Housing Opportunities.</b> Applies only to HAs 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 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), 982.153(b)(3) and (b)(4), 982.301(a) and 982.301(b)(4) and 982.301(b)(12))</p>	<p>Y or N PHA SEMAP certification verified by IA annual audit report &amp; confirmatory review if performed</p>	<p>PHA's SEMAP certification states that:</p> <p>(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;</p> <p>(B) PHA documentation shows that the PHA has taken actions indicated in its written policy to encourage participation by owners of units located in such areas.</p> <p>(C) 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 voucher holders about the full range of areas where they may look for housing;</p> <p>(D) PHA's information packet for voucher holders contains either a list of owners who are willing to lease (or properties available for lease) under the 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;</p> <p>(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</p> <p>(F) PHA documentation shows that the PHA has analyzed whether 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 area exception rents in any part of its jurisdiction and has sought HUD approval of exception rents when necessary. 5 points</p> <p>PHA's SEMAP certification does not support the statements above. 0 points.</p>
<p>Note: Indicators 1 - 7 will not be rated if the PHA expends less than \$500,000 a year in Federal awards and its Section 8 programs are not audited by an IA. A PHA that expends less than \$500,000 in Federal awards in a year must still complete the certification for these indicators.</p>		

SEMAP INDICATORS - FINAL RULE AS AMENDED		
Performance Indicator	PHA Response / How Verified	Rating
<p><b>8. Payment Standards.</b> The PHA has adopted current payment standards for the voucher program by unit size for each Fair Market Rent (FMR) area in the PHA jurisdiction and, if applicable, for each PHA-designated part of an FMR area, which do not exceed 110 percent of the current applicable FMR and which are not less than 90 percent of the current FMR (unless a lower percent is approved by HUD). (24 CFR 982.503)</p> <p>The current PHA payment standards and FMRs must be listed.</p> <p>If the PHA has jurisdiction in more than one FMR area, and/or if the PHA has established separate payment standards for a PHA-designated part of an FMR area, payment standards and FMRs for each FMR area and designated area must be included.</p>	Y or N PHA data submitted on the SEMAP certification form concerning payment standards.	<p>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.</p> <p>The PHA's voucher program payment standard schedule contains payment standards which exceed 110 percent of the current applicable published FMRs and 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.</p>
<p><b>9. Annual Reexaminations.</b> The PHA completes a reexamination for each participating family at least every 12 months. (24 CFR 5.617) (Enter Yes or No)</p>	Y or N PIC	<p>Fewer than 5 percent of all PHA reexaminations are more than 2 months overdue. 10 points.</p> <p>5 to 10 percent of all PHA reexaminations are more than 2 months overdue. 5 points.</p> <p>More than 10 percent of all PHA reexaminations are more than 2 months overdue. 0 points.</p>
<p><b>10. Correct Tenant Rent Calculations.</b> The PHA correctly calculates the family's share of the rent to owner in the voucher program. (24 CFR 982, Subpart K) (Enter Yes or No)</p>	Y or N PIC	<p>2 percent or fewer of PHA tenant rent and family's share of the rent to owner calculations are incorrect. 5 points.</p> <p>More than 2 percent of PHA tenant rent and family's share of the rent to owner calculations are incorrect. 0 points.</p>
<p><b>11. Pre-contract HQS Inspections.</b> Newly leased units pass HQS inspection before the beginning date of the assisted lease and HAP contract. (24 CFR 982.305) (Enter Yes or No)</p>	Y or N PIC	<p>98 to 100 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 5 points.</p> <p>Fewer than 98 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 0 points.</p>

SEMAP INDICATORS - FINAL RULE AS AMENDED		
Performance Indicator	PHA Response / How Verified	Rating
<b>12. Annual HQS Inspections.</b> The PHA inspects each unit under contract at least annually. (24 CFR 982.405) (Enter Yes or No)	Y or N PIC	Fewer than 5 percent of annual HQS inspections of units under contract are more than 2 months overdue. 10 points. 5 to 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 5 points. More than 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 0 points
<b>13. Lease-Up.</b> The PHA enters assistance contracts on behalf of eligible families for the number of units that has been under ACC, or under budget for at least one year. (24 CFR 982.157) (Enter Yes or No)	a. The # units leased last PHA CY b. The # units awarded last PHA CY % leased: a / b Calculated by HUD based on the Voucher Management System (VMS)	The percent of units leased during the last PHA calendar year was 98 percent or more. 20 points. The percent of units leased during the last PHA calendar year was 95 to 97 percent. 15 points. The percent of units leased during the last PHA calendar year was less than 95 percent. 0 points.
<b>14. Family Self-Sufficiency Enrollment and Escrow Account Balance.</b> This indicator applies only to HAs 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 PIC that have had increases in earned income which resulted in escrow account balances. (24 CFR 984.105 and 984.305)	a. # mandatory slots b. # families currently enrolled % FSS slots filled (b/a) PIC	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. 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. 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. 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. 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. 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.

SEMAP INDICATORS - FINAL RULE AS AMENDED		
Performance Indicator	PHA Response / How Verified	Rating
<p><b>*** Deconcentration Bonus.</b> Bonus points will be awarded if half or more of all Section 8 families with children assisted by the PHA in its principal operating area reside in low poverty census tracts; if 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 PHA FY is at least 2% higher than the percent of all Section 8 families with children who reside in low poverty census tracts at the end of the last PHA FY; or if the percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area over the last 2 PHA FYs is at least 2% 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 PHA FY. (APPLIES ONLY TO PHAS WITH JURISDICTION IN METROPOLITAN FMR AREAS)</p>	<p>PHA data on SEMAP certification and Annual audit report</p>	<p>PHA data shows that one of the standards has been met, and the latest IA audit report states that the auditor has determined that the PHA has on file documentation of its analysis of data which supports its submission to HUD for bonus points. 5 points</p> <p>N = 0 points</p> <p><b>NOTE:</b> For a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50<sup>th</sup> percentile rent to provide access to a broad range of housing opportunities throughout a metropolitan area in accordance with 24 CFR 888.113(c), 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 in the HUD-prescribed format for this indicator is <b>mandatory</b>. However, the SAFMR final rule, published November 16, 2016, established requirements to transition out of the use of 50th percentile rents over a three-year period. PHAs scoring the maximum number of points on this indicator in the prior year or two out of the last three years may request HUD approval of payment standard amounts based on the 50th percentile.</p> <p>Submission of deconcentration data for this indicator is optional for all other PHAs.</p>
<p><b>New Indicator: Success rate of voucher holders</b> 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</p>	<p>Y/N PIC data.</p>	<p>5 points: 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: 75 percent; or 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 24 CFR 982.503(e)(1) plus 5 percentage points; and 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 24 CFR 985.3(n).</p>

## The SEMAP - 50058 Connection: A Guide to 50058 Data Elements Used to Generate SEMAP Scores

	Description	50058 Lines Used	Comments
<b>#9 - Annual Reexaminations</b>	Measures % of participants with late reexaminations of income, meaning 2 months overdue. Total count of all families = line 2a = 1 (new Admission) or 2 (Annual Reexam). Number of months between reexams is Date of Summarization (i.e. date measure is taken) minus the Effective Date of Action - Line 2b. For example, line 2b of the 50058 is dated 7/1/97 and the measure of late reexams is done in PIC on 10/1/98, then the number of intervening months is 16 months and is considered a late reexam. Reexams are considered late if over 15 months. For example, 16 months equals one month overdue. Calculation assumes a 30 day month and rounds to the nearest month.	2a and 2b	Measure is skewed against PHA if PHA fails to execute End of Participation 50058s for participants who left program. Result is old 50058s still in system with time since last reexam growing.
<b>#10 - Correct Tenant Rent Calculations</b>	Most complex and extensive calculation involving all rent related 50058 lines, with PIC calculating its own version of the correct rent using family data supplied by PHA and comparing it with the PHA's rent determination	various	Important to monitor error rate throughout year to determine cause of discrepancies noted in PIC.
<b>#11 - Pre-Contract HQS Inspections</b>	For newly leased units, measures the % of units which pass inspection prior to the HAP contract effective date. Total units is determined by number of 50058s with line 2a = 1 (new admission, or 11b, 12b or 14b = Y, meaning family is moving to the unit. Compares Effective Date of Action (line 2b) to Date Unit Passed Inspection (line 5g). If line 5g - Date Passed is later than line 2b - Effective Date of Action, unit is not counted toward % that passed inspection prior to HAP Contract.	2a, 2b, 11b, 12b, 14b, and 5g.	Ensure accuracy of date entered into Line 2b Effective Date of Action. 50058 instruction booklet defines Effective Date of Action when lease was signed. The HAP Contract term and lease term are required to be the same. The PHA should ensure there is no confusion over the proper date to enter into line 2b.



	<b>Description</b>	<b>50058 Lines Used</b>	<b>Comments</b>
<b>#12 - Annual HQS Inspections</b>	Measures % of HQS inspections conducted over 15 months from the last inspection (12 months plus 3 months data transmission leeway). Actual calculation is: Count the number of units where the Summarization date (date measurement is taken) minus date of last inspection (line 5h) exceeds 15 months. That number divided by total certs and vouchers in the system.	5h	Like late reexams, failure to delete old terminated records by sending in an End of Participation 50058 will result in aging inspections with no new inspections, increasing number of "late HQS Inspections."
<b>#13 - Family Self Sufficiency - Component A: Enrollment</b>	Measures the number of families enrolled as % of mandatory slots. Counts the number of families enrolled indicated in Line 16a of the FSS Addendum to the 50058 as "New Enrollment," or "Progress Report." For SEMAP Report, PIC will only report number of families enrolled. HUD Field Office will calculate % of mandatory slots. PHAs certify to number of mandated slots.	16a	Failure to submit FSS Addenda to 50058s is most prevalent problem, having the effect of understating number enrolled. Changes in the new Housing Statute affect the mandatory number of slots.
<b>#13 - Family Self Sufficiency - Component B: Escrow</b>	Measures % of FSS families with balances in their escrow account by counting the number of FSS families (16a) shown with FSS account balances from line 16d(2) and (3).	16a, 16d(2), 16d(3)	See above re submission of 50058 Addenda.
<b>Report Rate</b>	PIC report rate needs to be determined to ensure that PHA has met threshold of 95%. Report rate calculated by dividing the number of families reported (successful submission) under PIC by the number of unit months reported in the year-end financial statement divided by 12.	HUDCAPS containing data from financial statement imported to prepare PIC SEMAP report.	Achieving 85% report rate is a threshold for being assessed under PIC indicators, otherwise these indicators will receive fail ratings.

## Notes

## **CHAPTER 2      Self-Assessment of the SEMAP Indicators**

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### **INDICATOR 1. SELECTION FROM WAITING LIST**

- The PHA must have written selection policies in its administrative plan
- Families must be selected from the waiting list in accordance with PHA policies

#### **Selection from Waiting List for Supervisory Audit**

- Written policies in administrative plan
- PHA follows policies in selecting families from waiting list
- Families met selection criteria that determined their place on waiting list and order of selection.

#### **Points**

- PHA has written waiting list selection policies in its administrative plan, and
  - If at least 98% of families audited in each of the two samples met selection criteria, the agency will receive 15 points
  - If less than 98% of families audited in either or both of the two samples met criteria, the agency will receive zero points

#### **Sampling Criteria**

- Two separate reviews are conducted under this Indicator. Samples will be drawn for review from each of the below:
  - Applicant names that reached the top of the waiting list during the audit period
  - Families admitted to the program during the audit period.

**Most Common Errors in Waiting List Selection**

- Lack of clearly written selection policies
  - The administrative plan should:
    - Clearly state the preferences
    - Clearly define the preference verification criteria
    - Clearly explain how preferences are applied
      - Lumping
      - Aggregating
      - Ranking
- Not understanding regulatory preference requirements (24 CFR 982.207)
  - Residency preference
    - Cannot have a residency requirement
    - Residency preference applies to applicants who:
      - Reside in the residency preference area,
      - Are working in the residency preference area, or
      - Have been notified that they are hired to work in the residency preference area.
    - A 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 job training program is designed to prepare individuals for the job market.
    - A PHA must not base the residency preference on how long an applicant has resided or worked in a residency preference area.
  - Preference for working families
    - A PHA can adopt a preference for families where the head, spouse or sole member is employed.
      - 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.
      - *Example 1:* Head of household is elderly, but does not work. There is no spouse or cohead. This family receives benefit of the working preference.
      - *Example 2:* Head of household is 64, spouse is disabled. Neither work. This family receives benefit of the working preference.

- *Example 3:* Head of household is 63, spouse is neither elderly nor disabled. Neither work. This family does NOT receive benefit of the working preference since both the head of household and spouse (or cohead) must be elderly and/or disabled to receive benefit of the working preference, unless one is working an average of 20 hours a week for the past 6 months.
- Preference for persons with disabilities
  - A PHA may adopt a preference for admission of families that include a person with disabilities.
    - The PHA may not adopt a preference for admission of persons with a specific disability.
- Preference for single persons who are elderly, displaced, homeless, or persons with disabilities.
  - A 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.
- Not understanding Special Admissions (982.203)
  - Special Admission (non-waiting list): Assistance targeted by HUD
    - Funding awarded that is targeted for families living in specified units.
    - 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.
    - Examples of types of program funding that may be targeted for a family living in a specified unit include:
      - A family displaced because of demolition or disposition of a public housing project;
      - A family residing in a multifamily rental project when HUD sells, forecloses, or demolishes the project.
- Not documenting when 'skipping' a family on the waiting list in order to select an extremely low-income family so as to meet income targeting requirements (982.207)
  - Not less than 75% of families admitted to a PHA's tenant-based voucher program during the PHA fiscal year from the waiting list shall be extremely low-income families.

- Lack of waiting list controls
  - Too many staff with access to the waiting list reduces accountability.
- Failure to document each selection from the waiting list.
  - Document each selection with a report listing more families than selected; retain a copy of the report in the SEMAP records with selected families clearly noted.
  - Maintain documents on special admissions
  - Maintain records on income targeting
- Incorrectly assessing this indicator
  - Indicator is two separate samples, each assessing whether families were *selected from the waiting list* properly
  - As one sample is pulled from families admitted to the program, some PHAs incorrectly assess whether these families were properly *admitted* to the HCV program

### Getting Proof

- Put a copy of the top of the waiting list you pulled from in the file
  - Note why you skipped someone if you did
  - Note if you did any special admissions
- Attach copy of each selection letter sent
- Waiting List Notations:
  - Jones                      skipped (reason)
  - Sarazac                    skipped (reason)
  - Verona                    income targeting
  - Palstrom                   skipped (reason)
  - Belle                      income targeting

**Data-Gathering Process and Forms*****Standard: Families selected in accordance with written admission policies*****Compliance Requirement**

- The PHA must have written policies in its Section 8 administrative plan for selecting applicants from the waiting list.
- PHA documentation must show that the PHA follows these policies when selecting applicants for admission from the waiting list.
- Except as provided in 24 CFR 982.203 (Special admission (non-waiting list)), all families admitted to the program must be selected from the waiting list.
- “Selection” from the waiting list generally occurs when the PHA notifies a family whose name reaches the top of the waiting list to come in to verify eligibility for admission. (24 CFR 982.54(d)(1), and 982 Subpart E)

**Audit Objective**

- PHA must have written waiting list selection policies in its administrative plan and determine the extent to which PHA documentation demonstrates that families were selected from the waiting list in accordance with PHA policies and met the selection criteria that determined their places on the waiting list and their order of selection.

**Suggested Procedures for Audit**

- PHA auditors should obtain your policies for selecting applicants from the waiting list.
- The auditors should randomly select for review a sample of applicant names that reached the top of the waiting list (were selected from the list) during the audit period.
- The audit should gather the following source documents for randomly selected families:
  - Application or application update (indicating preferences, time and date of application, or lottery number)
  - A copy of the family waiting list selection letter
  - Waiting list showing when the family was selected
- PHA documentation should verify that the applicants in the sample were selected from the waiting list in accordance with the PHA’s policies and met the selection criteria that determined their places on the waiting list and their order of selection (or were properly admitted as a special non-waiting list admission).

- The auditors will also randomly select for review a separate sample of families admitted to the program during the audit period. The same procedures should be followed, and the same requirements reviewed.

### Sample sizes

- The number of applicant names and the number of admitted families to be randomly selected will be as follows:

Number of New Admissions in Fiscal Year	Number of Families to be Selected for Each Sample
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

### Preference System Listed in Administrative Plan

Administrative plan contains written policies for selecting families from the waiting list:

☐ Yes ☐ No

Local Preferences used?

☐ Yes ☐ No

System for Local Preferences:  
Aggregate

☐ Lump ☐ Rank ?

Date and Time as Local Preference?

☐ Yes ☐ Tie breaker

Are there any circumstances under which you might issue a voucher to someone not on the waiting list?

☐ Yes ☐ No

Are there any situations where you might skip over someone on the waiting list or admit a family out of the order described in your administrative plan?

☐ Yes ☐ No

If so, are these situations addressed in the administrative plan?

☐ Yes ☐ No



**Audit File Documentation for Families Selected from Waiting List**

- PHA auditors should pick a time period from which to sample files for review. They will determine whether:
  - Families were selected from the waiting list according to the preference system specified in the administrative plan.
  - The PHA took families out of order.
- If possible, use the printout of the waiting list with a batch of families who were notified for a full application interview during the period being reviewed. The date the family was selected from the waiting list is the date on the letter notifying them of their interview for final eligibility determination.
- If a printout is not available, there should be some record of families who were selected in a particular month.
- To determine whether families were selected in the preference order specified in the administrative plan, the auditors will compare the preference system specified in the administrative plan to the preference verification information in the families' files.
- For example, if local preferences are used, the selection of any family without a local preference would be improper. If date and time are being used as the local preference system and 100 percent of the families are selected under the local preferences, families selected during a particular period should have sequential application dates.
- To prepare for the audit, document the information and make up a file folder with the information to show the auditor.
- For each month that selections were made from the waiting list during the applicable period, the information on the preference system *in effect for the applicable month* should be documented.

- The printed waiting list will be matched with families selected.
  - Periods used for analysis may be determined by the auditor (such as previous 12 months).
  - All families selected from the waiting list should be listed.
  - Applicant files should include a copy of the family's application and any updates, reflecting claimed preferences (if applicable) and date and time of application.
  - Applicant files should also include the family's waiting list selection letter, which shows the date sent.
  - To prepare, check Y if families were selected in order. Check N if appear to have been selected out of order. If N, note whether human error or malfeasance.
  - To prepare, determine what percent of families were selected properly in sampling.

Data Gathering Process/Forms for Indicator 1. Selection from Waiting List

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**Audit File Documentation for Families Admitted to Program**

- The auditor will randomly review families who were admitted to the program, identified either through a HUD ad hoc report or PHA software report.
- The auditor will determine whether they were properly selected following the same procedures as for families selected from the waiting list.

Data Gathering Process/Forms for Indicator 1. Selection from Waiting List

[illegible]

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has created an administrative plan				
<input type="checkbox"/> The administrative plan is written in accordance with HUD regulations and other requirements.				
<input type="checkbox"/> The administrative plan is periodically revised to remain in compliance with HUD regulations and other requirements.				
<input type="checkbox"/> The PHA has the following policies included in their administrative plan:				
<input type="checkbox"/> A policy that describes how the PHA selects applicants from the PHA waiting list, including applicants with local preferences, and procedures for closing and reopening the PHA waiting list.				
<input type="checkbox"/> There is a policy that either admits or rejects the applicant for the waiting list.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA maintains records showing special admissions, including HUD notification letters.				
<input type="checkbox"/> Waiting lists are organized to ensure selection occurs according to program requirements and PHA policy.				
<input type="checkbox"/> The waiting list is organized to order applicants by admission preferences and date and time.				
<input type="checkbox"/> The waiting list reflects the following: <input type="checkbox"/> family name <input type="checkbox"/> household type (elderly, disabled) <input type="checkbox"/> application number (if applicable) <input type="checkbox"/> date and time of application receipt <input type="checkbox"/> claimed admission preferences <input type="checkbox"/> racial or ethnic designation of head of household				
<input type="checkbox"/> PHA procedures document applicant selection in a way that supports a HUD/management review.				
<input type="checkbox"/> PHA procedures ensure applicant files are properly documented as to when and why applicants were selected, including the preapplication with date and time of receipt, documented claimed preferences, and a dated notice to the applicant of selection.				
<input type="checkbox"/> The PHA's procedures document date and time as indicators for applicants who qualify for the same preferences, or if the PHA selects by date and time.				
<input type="checkbox"/> The PHA uses drawings or lottery to select applicants who claim the same local preference.				
<input type="checkbox"/> The PHA uses lottery to select applicant families for placement on the waiting list.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Staff are clear about division of duties.				
<input type="checkbox"/> Specific staff are delegated responsibility for selecting families from the waiting list.				
<input type="checkbox"/> Waiting list selection staff is fully trained and knowledgeable regarding PHA waiting list selection policies.				
<input type="checkbox"/> Waiting list selection staff understands what documents need to be maintained and/or noted to support that the PHA properly selected from the waiting list.				
<input type="checkbox"/> A supervisor or management staff person regularly reviews waiting list selections for proper selection and documentation.				
<input type="checkbox"/> Staff is required to document in the software and/or family file when the family updates their waiting list status (for example, newly claiming a waiting list preference).				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The applicant file documents each step of the application and selection process.				
<input type="checkbox"/> The agency has instituted peer-review sessions to monitor consistency in interpretation of policies and procedures.				
<input type="checkbox"/> The supervisor periodically (quarterly?) conducts random sampling of applicant files.				
<input type="checkbox"/> Staff duties are well defined.				
<input type="checkbox"/> Information that can verify and document waiting list placement is maintained in applicant file and in aggregate independent form.				
<input type="checkbox"/> The waiting list is periodically purged in accordance with the PHA's administrative plan, and updated with update letters and responses (or lack of response) maintained and documented.				
<input type="checkbox"/> The PHA has a certification in the file attesting to selection from the waiting list in accordance with policy.				
<input type="checkbox"/>				
<input type="checkbox"/>				



**INDICATOR 2. REASONABLE RENT**

- A PHA must have a reasonable written method for determining and documenting that the rent to owner is reasonable based on current rents charged for comparable unassisted units for each unit leased.
- The method may take into consideration nine comparability factors: the location, size, type, quality, and age of the assisted unit and any amenities, housing services, maintenance, and utilities provided by the owners.
- The PHA must follow its written method for determining reasonable rent and must document its determination that the rent to owner is reasonable:
  - At the time of initial leasing;
  - If there is any increase in the rent to owner;
  - At the time of 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 must also redetermine the reasonable rent if directed by HUD, and may also redetermine the reasonable rent at any other time.

**Points**

- PHA has written rent reasonableness methodology and followed its method to determine reasonable rent, and has documented the rent to owner is reasonable at required times:
  - For at least 98% of units sampled      20 points
  - For 80%–97% of unit sampled      15 points
  - Certification does not support above      0 points

**Sampling Criteria**

- Samples will be drawn from
  - Assisted families
- HUD's SEMAP Training for PHA staff states: "Files in the sample which did not require rent reasonableness performed are considered in compliance."
  - <https://www.youtube.com/watch?v=kjgOXshWPOo>

## Overview of Rent Reasonableness

- HUD's *Housing Choice Voucher Program Guidebook* provides an overview of rent reasonableness requirements.
  - [https://www.hud.gov/sites/dfiles/PIH/documents/HCV\\_Guidebook\\_Rent%20Reasonableness\\_updated\\_Sept%202020.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Rent%20Reasonableness_updated_Sept%202020.pdf)
- The purpose of rent reasonableness is to ensure that:
  - Owners charge reasonable rents to housing choice voucher participants
  - Section 8 does not inflate rents in the community

## Documentation

- PHAs are required to document each rent reasonableness determination. Documentation should include:
  - Data on unassisted units compared
  - Who made the determination and when

## Form HUD 52517

- Form HUD-52517, Request for Tenancy Approval (RFTA), solicits information from owners on the rents charged for three recent rentals of comparable unassisted units within the premises.
  - Owners supply this information in field 12a of the RFTA.
- Per Notice PIH 2003-12, PHAs:
  - May use the information provided in item 12a of the RFTA to determine and document rent reasonableness for comparable unassisted units in the same apartment complex
    - In this case, the PHA does not have to obtain additional rent comparables in other multifamily housing in the area.

- Notice PIH 2003-12 also clarifies the use of the nine comparability factors for determining rent reasonableness:
  - PHAs are **not** required to “quantifiably document or separately evaluate” each of the nine factors in order to fully comply with the regulation at 24 CFR 982.507(b).
  - The nine factors are intended “to assist PHAs in developing a commonsense approach to valuing a unit.”
  - A commonsense approach calls for rent reasonableness determinations that are:
    - Based on “rents paid for similar units in the same general location that are also **generally** similar in terms of the **overall** quality of housing services provided”
    - Performed in a manner that is reasonable, consistent, and well documented

### Defining the Rent Reasonableness System

- HUD has elected not to provide explicit regulatory guidance to PHAs on how to develop a rent reasonableness system.
- PHAs generally use one of two systems:
  1. Unit-by-unit comparison
  2. Unit-to-market comparison
- It is very important that the system used matches the PHA’s policy, procedures, and forms.

#### 1. Unit-by-Unit Comparison

- This is the most common method used, and probably the most accurate, if enough comparables are available.
- The proposed unit is compared to one or more unassisted units in the market (assisted units cannot be considered as comparables).
  - Notice PIH 2020-19 provides additional information on rent reasonableness determinations, detailing what constitutes an assisted vs. unassisted unit.
  - Notice PIH 2020-19 also clarifies that units with a rent restriction are excluded from rent reasonableness determinations until the rent restriction has expired or the restricted rents are not below market.

- Updating rent comparable data regularly ensures accurate and current rent comparisons. How often data should be updated depends on market conditions.
- The HCV Guidebook states: “In some communities, it may be adequate to update the information every year. For rapidly changing markets, however, it may be appropriate to update the database quarterly.”
- The PHA must include units of various sizes and types in various neighborhoods within the PHA’s jurisdiction. If a PHA has multiple rental market areas within their jurisdiction, it will affect the sample size. The data base should include units higher and lower than the payment standard. The old HCV Guidebook suggested that data be collected on units with gross rents at least 20-25% above of the greater of the FMR or the payment standard, including any HUD-approved exception payment standards.
- The amount of data collected on each unit is important. There should be an “apples-to-apples” comparison, using the same information (drawn from the nine factors.)
- If there are additional factors in the comparison from one unit to another, the PHA will have to adjust the rents to reflect the additional or fewer factors.
- NMA suggests that information be collected on all nine factors so these adjustments can be made. Whether points or dollars are used for the adjustments, PHAs should make sure that the value it places on a feature is accurate, either through comparison of multiple rents in the marketplace or by interviewing experts. The features should make a difference in the rent.
- Utility responsibility must be considered so that gross rent can be compared to gross rent. There should be an adjustment to accommodate utilities that are or are not included in the rents of all units compared.
- The results must be documented in the family’s file.

## 2. Unit-to-Market Comparison

- Since this system is not as transparent as a unit-to-unit comparison, the PHA must ensure that it is well documented as to how average rents or rent ranges have been determined. The documented justification must be defensible, as well as how the adjustments are made to the rents. It is more difficult in this system because information on the nine factors is often not known.

### ***A Sample System: AffordableHousing.com***

*(Call NMA for more information)*

- In this comprehensive automated system, the PHA is able to:
  - Perform rent reasonableness using current market comparables with all 9 factors on a self-calculating comparison form
  - Have landlords enter their unit data for vacant units
  - Enter PHA comparables and automatically generate other comparables from four other listings
  - Quickly print out a real-time available unit listing for families
  - Print out the justification used for any rent adjustments and the final paperwork for the file
- The steps used in the program include:
  - Step 1. Landlord lists vacancy with AffordableHousing.com/PHA
  - Step 2: With the assistance of the AffordableHousing.com database, the landlord sets a realistic rent amount
  - Step 3. Prospective tenant quickly locates a quality rental by using one of AffordableHousing.com rental locator services
  - Step 4. A lease is executed and AffordableHousing.com adds either a subsidized or non-subsidized comparable to the Rent Reasonable database
  - Step 5. PHA uses AffordableHousing.com's Rent Reasonable appraisal module to accurately verify market rent

- In addition, PHA uses AffordableHousing.com's SEMAP reports to prove to HUD:
  - Accurate rent reasonableness
  - Deconcentration bonus
  - Successful landlord outreach
- The features of this system include:
  - Integrated property listing service (properties listed or located 24/7 by Fax or by Phone)
  - Tenant locator service for landlords (landlords can locate tenants actively seeking housing)
  - Printed landlord list management (easily print and distribute courtesy landlord listings in minutes)
  - Landlord tracking and reporting (locate and report on problem properties or landlords)
  - Real-time listing notification (tenants notified of new listings by email or phone)
  - Real-time comparables (comparables consistently and continuously added to the Rent Reasonable database)
  - Rent Reasonable mapping interface (real-time dynamic maps pinpoint the location of comparables for the most accurate selection)
  - Real-time Geo-Coding (more accurate than census tracts or zip codes)
  - Landlord outreach features (quantifiable increase in landlord participation via landlord marketing and automated email campaigns)
  - De-Concentration features (display subsidized units by census tract at any point in time)
  - Detailed market analysis (better negotiate rents with real-time market statistics and maps of competing listings)
  - Rent Reasonable performance reports (monitor individual inspector performance and prove to HUD accurate Rent Reasonable methodology)
  - Landlord Outreach performance reports (easily integrates into your admin plan to prove successful landlord outreach and quantifies new landlord participation)

- Verifiable data (owner or agent contact information on each comparable)
- Consideration for overlapping jurisdictions (less redundancy and increased efficiency by merging and sharing data)
- Comparable verification feature (easily verify and update comparables with public records)
- Web-based (no software installation required)
- Rent Reasonable certification (automatically generated HUD compliant reports)
- Add your own comparables (PHAs can add their own comparables at any time)
- Common errors
  - Failure to have clear methodology in the administrative plan
  - Failing to ensure comparables are current
  - Assigning rent reasonableness determinations to multiple staff persons, resulting in lack of consistency in rent approvals
  - Using rent reasonableness systems that fail to:
    - Capture comparables accurately;
    - Make documentable comparison;
    - Clearly document that policy was followed.
  - #1 errors:
    - Documentation is not in the file, or
    - Documentation is in the file, but it is not signed and/or dated.
- Getting Proof
  - Copy of rent reasonableness policies
  - Copy of rent reasonableness documentation for each rent reasonableness determination reviewed

**Data Gathering Process and Forms**

***Standard: PHA has written methodology and documents rent reasonableness as required.***

**Compliance Requirement**

- The PHA must have and implement a 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; 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.
- The PHA's method must take into consideration the location, size, type, quality, and age of the unit and the amenities, housing services, and maintenance and utilities provided by the owner under the lease in determining comparability and the reasonable rent. (24 CFR 982.54(d)(15) and 982.507)

**Audit Objective**

- The PHA must have a reasonable written system, based on HUD guidelines, to determine 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; and
  - If there is a 10 percent decrease in the published fair market rent (FMR) 60 days before the HAP contract anniversary.
- At the audit, the following will be determined:
  - The extent to which the PHA follows its written system
  - The extent to which the PHA documents in the participant files each determination that the rent to owner is reasonable
- The system used should not result in the PHA approving excessively high rents for units in the program. If a specific audit is performed to validate the system, unassisted rental market data should be used.



### Suggested Procedures for Audit

- PHA auditors should review the PHA's written methodology for determining that rent to owner is reasonable. The auditors should determine whether the PHA's method is a reasonable means of gaining knowledge about the unassisted rental market, obtaining current data on rents being charged for available unassisted rental units, and comparing program units with unassisted units in terms of location, size, features and rent.
- The auditors will randomly select a sample of tenant files for review.
- For each selected tenant file that indicates either an initial leasing, an increase in the rent to owner during the audit period, or if there has been a 10 percent decrease in the published FMR during the audit period, for each tenant file that shows a HAP contract anniversary 60 days or more after the FMR decrease for a given bedroom size, the auditors will verify that the PHA not only followed its written method to determine that the rent to owner was reasonable, but also documented its determination in the files.

### Sample Sizes

- The number of tenant files to be randomly selected for audit is as follows:

Estimated Families Assisted	Number of Files to be Selected
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

### Audit File Documentation

- The PHA must describe the methodology for rent reasonableness determinations for new leases, for contract rent increases, and for rent decreases if the FMR has decreased by 10 percent as compared with the FMR in effect one year before the contract anniversary.
  - ☐ Administrative plan contains written methodology for performing rent reasonableness. ? Yes      ? No
- The PHA must then document that the methodology described in the administrative plan was in fact used to determine whether rents to owner were reasonable in relation to comparable unassisted units.

- The PHA must do this for:
  - Each new lease executed during the applicable time frame
  - Each rent increase approved during the applicable time frame
  - All other rent adjustments approved during the applicable time frame **if the FMR decreased by 10 percent**
- To document this for the auditors, the PHA should pick a time period for review and randomly select files to see whether proper documentation is in each file to prove rent reasonableness according to the methodology in the administrative plan.
- For example, if the administrative plan says the PHA documents rent reasonableness with a rent reasonableness checklist with particular factors on it for at least three comparable units, that checklist for three units should be in the file.

### **Rent Reasonableness Documentation**

- ☐ Determine time period to be analyzed (suggest previous 12 months).
- ☐ Pull sampling of files:
  - Initial lease-up
  - Rent increase requests by owner
  - FMR decreased by 10 percent from previous FMR
- ☐ Determine whether documentation is in file, reflects who conducted the rent reasonableness and when it was conducted, and that the methodology used follows the written methodology in the administrative plan.
- ☐ Determine whether approved rent matches the rent to owner in the housing software.
- ☐ Determine percent of files that met requirements.

Data Gathering Process/Forms for Indicator 2. Reasonable Rent

[illegible]

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The administrative plan includes a statement detailing the methodology for determining rent reasonableness				
<input type="checkbox"/> PHA policy requires staff to certify and document on a case-by-case basis that the approved rent is not more than comparable rents charged for unassisted units.				
<input type="checkbox"/> The PHA has a policy that accommodates requests for rent increases in rent-controlled units.				
<input type="checkbox"/> The PHA has a policy that ensures that gross rent at lease-up is comparable to the gross rent of unassisted units.				
<input type="checkbox"/> The PHA has a policy for determination of rent reasonableness for annual and special rent to owner adjustments and when there is a 10 percent decrease in the FMR.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA's rent reasonableness system uses current data (in accordance with policy) for comparables.				
<input type="checkbox"/> The PHA's sample includes units of various sizes and types in various neighborhoods within the PHA's jurisdiction (usually drawn from no less than 30 units.)				
<input type="checkbox"/> The PHA's system does not include subsidized rents in its comparables.				
<input type="checkbox"/> The PHA's system considers HUD's nine factors of comparability and adjusts accordingly.				
<input type="checkbox"/> The PHA's system considers who is responsible for utilities and appliances.				
<input type="checkbox"/> The PHA has written procedures for approving rents.				
<input type="checkbox"/> PHA procedures make clear which staff is authorized to conduct rent reasonableness, limiting to select positions to ensure consistency.				
<input type="checkbox"/> The PHA has written procedures that ensure that staff document and certify each unit for comparability and reasonableness, and the certification is placed in the family's file.				
<input type="checkbox"/> The PHA has a system that tracks the outcomes of an owner's request for a rent increase with the PHA's calculations and documents the decision made with respect to the options the owner chooses should the rent not increase to his/her expectations.				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Training on rent reasonableness requirements is provided ongoing to staff.				
<input type="checkbox"/> Rent reasonableness documentation is updated regularly and communicated to all staff.				
<input type="checkbox"/> Requests by owner for a rent increase is communicated timely to the rent reasonableness determination staff, with required documentation.				
<input type="checkbox"/> Rent reasonableness determinations are conducted in a timely manner, in accordance with policy, and communicated to administrative staff in a timely manner.				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> A supervisor reviews rent approvals to ensure methodology is followed, outcomes are consistent for owners, geographical areas, and types of units, and files are fully documented.				
<input type="checkbox"/> Staff meet regularly to discuss rent determination issues.				
<input type="checkbox"/> The PHA updates rent reasonableness data in accordance with policy.				
<input type="checkbox"/>				

**INDICATOR 3. DETERMINATION OF ADJUSTED INCOME**

- At admission and annual reexamination, the PHA must properly:
  - Obtain third-party verification of income and allowances;
  - Correctly determine adjusted annual income; and
  - Use the appropriate utility allowances where the family is responsible for utilities under the lease.

**Points**

- At least 90 percent of files sampled are correct      20 points
- 80 to 89 percent of files sampled are correct      15 points
- Less than 80 percent of files sampled are correct      0 points

**Supervisory Audit**

- Third-party verification or documentation as to why it was impossible to obtain is in file, or PHA verification policies were followed if:
  - PHA policy allows the PHA to accept the family's self-certification of the value of family assets and anticipated asset income if net family assets are less than or equal to the HUD-published threshold; or
  - PHA policy allows the PHA to determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest.
    - Third-party verification of the above must be obtained during the intake process and at least every three years thereafter.
  - PHA policy accepts income determinations from means-tested federal public assistance programs (Safe Harbor income determinations).
- Annual income is properly calculated
- Proper deductions/allowances are given
- Proper utility allowance is applied

### **Most Likely Error Points**

- Ongoing internal agency quality control reviews, including for Indicator 3 purposes, are the best means to identify any agency weakness. Common error types include:
  - Failure to document that verification requirements were followed, especially when a lower form of verification was used
  - Market/cash value of assets
  - Asset income
  - Employment income
  - Earned income disallowance
  - Disability assistance and medical expenses
  - Conflict between utility documentation

### **Regulatory Verification Requirement**

- The regulations governing verification are located at 24 CFR 982.516(a).
- The regulations state that PHAs either must obtain and document in family files third-party verification of the following factors or must document in the files why third-party verification was not available:
  - Reported family annual income
  - The value of assets
  - Expenses related to deductions from annual income
  - Other factors that affect the determination of adjusted income

### **Release Forms**

- Before requesting any verifications, PHAs must obtain signed consent forms from family members authorizing release of information.
- One such consent form must be consistent with the regulations at 24 CFR 5.230.
  - Form HUD-9886-A, Authorization for Release of Information/Privacy Act Notice (see page 32), is consistent with these regulations and therefore is the easiest form for PHAs to use.



- PHAs must also use other consent forms to request verification of information not covered by this form.
  - Because of privacy act issues, PHAs are advised to use specific, rather than generic, consent forms.

***Authorization for Release of Information/  
Privacy Act Statement (Form HUD-9886-A)***

- Form HUD-9886-A must be signed by:
  - All adult family members—i.e., those 18 years or older (24 CFR 5.230(a))
  - The family head and spouse regardless of age (24 CFR 5.230(a)).
- This form can be used between regular reexaminations to verify unreported income.
  - This consent form remains effective until the earliest of:
    - (i) the rendering of a final adverse decision for an assistance applicant;
    - (ii) the cessation of a participant's eligibility for assistance from HUD and the PHA; or
    - (iii) the express revocation by the assistance applicant or recipient (or applicable family member) of the authorization, in a written notification to HUD or the PHA.
- HUD-9886-A may be used by PHAs to obtain the following information **only**:
  - Wage and unemployment compensation from state wage information collection agencies (SWICAs)
  - Salary and wage information from current and former employers
  - Unearned income from financial institutions.

*EIV User's Manual*

- PHA staff may not view private information [available through HUD's Enterprise Income Verification System – EIV] unless there is a signed Authorization for the Release of Information and Privacy Act Notice (form HUD-9886-A) in the household's file for the head of household and the spouse of the head of household, or co-head, regardless of age, and for each adult family member in the household.

# Form HUD-9886-A

OMB Control Number: 2577-0295

Use this form for reexaminations effective on or after January 1, 2024. Use form HUD-9886 for reexaminations effective prior to January 1, 2024.

## Authorization for the Release of Information/Privacy Act Notice to the U.S. Department of Housing and Urban Development and the Housing Agency/Authority (HA)

U.S. Department of Housing and Urban Development, Office of Public and Indian Housing

**PHA or IHA requesting release of information** (full address, name of contact person, and date):

**Authority:** Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by Section 903 of the Housing and Community Development Act of 1992 and Section 3003 of the Omnibus Budget Reconciliation Act of 1993. This law is found at 42 U.S.C. 3544. This law requires you to sign a consent form authorizing: (1) HUD, and the Housing Agency/Authority (HA) to request verification of salary and wages from current or previous employers; (2) HUD and the HA to request wage and unemployment compensation claim information from the state agency responsible for keeping that information; and (3) HUD to request certain tax return information from the U.S. Social Security Administration and the U.S. Internal Revenue Service.

Section 104 of the Housing Opportunity and Modernization Act of 2016. The relevant provisions are found at 42 U.S.C. 1437n. This law requires you to sign a consent form authorizing the HA to request verification of any financial record from any financial institutions as defined in the Right to Financial Privacy Act (12 U.S.C. 3401)), whenever the HA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits.

**Purpose:** In signing this consent form, you are authorizing HUD and the above-named HA to request income information from the sources listed on the form. HUD and the HA need this information to verify your household's income, in order to ensure that you are eligible for assisted housing benefits and that these benefits are set at the correct level. HUD and the HA may participate in computer matching programs with these sources in order to verify your eligibility and level of benefits.

**Uses of Information to be Obtained:** HUD is required to protect the income information it obtains in accordance with the Privacy Act of 1974, 5 U.S.C. 552a. HUD may disclose information (other than tax return information) for certain routine uses, such as to other government agencies for law enforcement purposes, to Federal agencies for employment suitability purposes and to HAs for the purpose of determining housing assistance. The HA is also required to protect the income information it obtains in accordance with any applicable State privacy law. HUD and HA employees may be subject to penalties for unauthorized disclosures or improper uses of the income information that is obtained based on the consent form.

**Private owners may not request or receive information authorized by this form.**

**Who Must Sign the Consent Form:** Each member of your family who is 18 years of age or older must sign the consent form. Additional signatures must be obtained from new adult members joining the family or whenever members of the family become 18 years of age.

Persons who apply for or receive assistance under the following programs are required to sign this consent form:

Public Housing  
Housing Choice Voucher  
Section 8 Moderate Rehabilitation

**Failure to Sign Consent Form:** Your failure to sign the consent form may result in the denial of eligibility or termination of assisted housing benefits, or both. Denial of eligibility or termination of benefits is subject to the HA's grievance procedures and Section 8 informal hearing procedures.

**Revocation of consent:** If you revoke consent, the PHA will be unable to verify your information, although the data matches between HUD and other agencies will continue to automatically occur in the Enterprise Income Verification (EIV) System if the family is not terminated from the program.

### Sources of Information to be Obtained

State Wage Information Collection Agencies. (This consent is limited to wages and unemployment compensation I have received when I have received assisted housing benefits.)

U.S. Social Security Administration (HUD only) (This consent is limited to the wage and self-employment information and payments of retirement income as referenced at Section 6103(l)(7)(A) of the Internal Revenue Code.)

U.S. Internal Revenue Service (HUD only) (This consent is limited to unearned income [i.e., interest and dividends].)

Information may also be obtained directly from: (a) current and former employers concerning salary and wages; and (b) financial institutions as defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the HA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits. I understand that income information obtained from these sources will be used to verify information that I provide in determining eligibility for assisted housing programs and the level of benefits. Therefore, this consent form only authorizes release directly from employers and financial institutions of information.

**Consent:** I consent to allow HUD or the HA to request and obtain income information from the sources listed on this form for the purpose of verifying my eligibility and level of benefits under HUD's assisted housing programs. I understand that HAs that receive income information under this consent form cannot use it to deny, reduce or terminate assistance without first independently verifying what the amount was, whether I actually had access to the funds and when the funds were received. In addition, I must be given an opportunity to contest those determinations.

This consent form remains effective until the earliest of (i) the rendering of a final adverse decision for an assistance applicant; (ii) the cessation of a participant's eligibility for assistance from HUD and the PHA; or (iii) The express revocation by the assistance applicant or recipient (or applicable family member) of the authorization, in a written notification to HUD or the PHA.

**Signatures:**

Head of Household	Date		
Social Security Number (if any) of Head of Household		Other Family Member over age 18	Date
Spouse	Date	Other Family Member over age 18	Date
Other Family Member over age 18	Date	Other Family Member over age 18	Date
Other Family Member over age 18	Date	Other Family Member over age 18	Date

**Privacy Advisory.** Authority: The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937 (42 U.S.C. 1437 et. seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and by the Fair Housing Act (42 U.S.C. 3601-19). Purpose: This form authorizes HUD and the above-named HA to request income information to verify your household's income in order to ensure that you are eligible for assisted housing benefits and that these benefits are set at the correct level. Failure to provide any of the requested information may result in a delay or rejection of your eligibility approval.

**Penalties for Misusing this Consent:** HUD and the HA (or any employee of HUD or the HA) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on the form HUD 9886 is restricted to the purposes cited on the form HUD 9886. Any person who knowingly or willfully requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than \$5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the HA for the unauthorized disclosure or improper use.

**OMB Burden Statement.** The public reporting burden for this information collection is estimated to be 0.16 hours for new admissions and .08 hours for household members turning 19, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Collection of information income and assets is required for program eligibility determination purposes. The submission of the consent form is necessary (form-HUD 9886) so that PHAs can carry out the requirements of Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by Section 903 of the Housing and Community Development Act of 1992 and Section 3003 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 3544) and Section 104 of HOTMA to ensure that HUD and PHAs can verify eligibility and income information for applicants and participants. This information collection is protected from disclosure by the Privacy Act. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Office of Public and Indian Housing, US. Department of Housing and Urban Development, Washington, DC 20410. When providing comments, please refer to OMB Approval No. 2577-0295. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

**HIERARCHY OF VERIFICATION METHODS**

- HUD has established a hierarchy of six verification levels.
- Using this hierarchy, PHAs should adopt verification policies as to what qualifies as adequate verification.
  - Policies must be consistent with the regulatory requirements.

**Levels of Verification**

*24 CFR 5.233(a)(2); Notice PIH 2018-18*

- Level Six—Up-Front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) System and the Income Validation Tool (IVT)
- Level Five—UIV using other sources
- Level Four—Written third-party documents provided by the family, HOTMA: EIV plus self-certification
- Level Three—Written third-party verification form
- Level Two—Third-party oral verification
- Level One—Tenant declaration

**UP-FRONT INCOME VERIFICATION (UIV) USING EIV AND IVT (LEVEL SIX)**

- UIV is the verification of income, before or during a reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals.
  - HUD believes that UIV offers the best opportunity for making the biggest impact on reducing subsidy errors.
- HUD's Enterprise Income Verification (EIV) System is a type of UIV system that is a mandatory resource that must be used by every PHA to verify participant income.

- The EIV system is a web-based application which provides PHAs with employment, wage, unemployment, and social security benefit information of participants in the public housing and housing choice voucher programs.
  - Information in EIV is derived from computer matching programs with the Social Security Administration (SSA) and the Department of Health and Human Services.
- Within the EIV system, the Income Validation Tool (IVT) provides a comparison between tenant-reported income and previously reported income on the form HUD-50058, and includes any discrepant income information from data sharing with HUD partners. The IVT replaces the income discrepancy report. Data in the tool is updated monthly.

#### ***Using EIV and IVT for Verification***

- The EIV Income Report and Income Validation Tool (IVT) are mandatory for annual reexaminations.
  - However, PHAs are not required to use the EIV Income Report:
    - At annual reexamination if the PHA used Safe Harbor verification from another means-tested federal assistance program to determine the family's income; or
    - During any interim reexaminations.
- They are not available for applicant families or new members added to a currently assisted household.

- PHAs are required to obtain an EIV Income Report for each family any time the PHA conducts an annual reexamination. However, PHAs are not required to use the EIV Income Report:
  - At annual reexamination if the PHA used Safe Harbor verification from another means-tested federal assistance program to determine the family's income; or
  - During any interim reexaminations.
  - The EIV Income Report is also not available for program applicants at admission.
  - When required to use the EIV Income Report, in order for the report to be considered current, the PHA must pull the report within 120 days of the effective date of the annual reexamination.
  - Under HOTMA, the EIV Income Report may be used to verify and calculate income at annual reexamination if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information in EIV.
- The PHA **must** obtain additional third-party verification:
  - To supplement EIV-reported income sources
  - When EIV has no data
  - When the family disputes EIV income data and is unable to provide acceptable documentation
- The PHA **must** obtain additional third-party verification when additional information is required and is not available in EIV, or when the family does not have acceptable tenant-provided documents. For example, to verify:
  - Effective dates of employment
  - Pay rate, number of hours worked, pay frequency for new jobs
  - Confirmation of change in circumstances (reduced hours, reduced rate of pay, etc.)
- The EIV printout is sufficient verification of social security and SSI benefits unless the family disputes the EIV data for verification.

- For annual reexaminations, the PHA is required to document the following in the tenant file:
  - If the family does not dispute the EIV employer data and the PHA determines that additional information is not necessary:
    - EIV income details and IVT report
    - Tenant-provided documents
  - If the family disputes or the PHA requires additional information:
    - EIV printout
    - Tenant-provided documents
    - Third-party written verification

#### **UP-FRONT INCOME VERIFICATION USING OTHER SOURCES (LEVEL FIVE)**

- UIV using other sources is the second most preferable form of verification.
- While EIV is mandatory, UIV using other sources is optional.
- UIV using other sources is used to validate tenant-reported income.
- Current UIV resources include the following:
  - State government databases/SWICA
  - State Temporary Assistance for Needy Families (TANF) systems
  - Credit Bureau Association (CBA) credit reports
  - Internal Revenue Service (IRS) tax transcript (request with IRS form 4506-T)
  - Private sector databases (e.g., The Work Number)

**LEVEL FOUR VERIFICATION**

- HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

**EIV + SELF-CERTIFICATION**

- Under HOTMA, EIV may be used as written third-party verification and may be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is accurate and representative of current income. This practice is known as EIV + self-certification. When calculating income using this method, the PHA may use its discretion to determine which method of calculation is reasonable: the last four quarters combined or an average of any number of quarters. The family must be provided with the information from EIV.
- For written third-party verification, documents must be original and authentic and may be supplied by the family or received from a third-party source.
- Documents must be (generally) dated within 120 days of the date received by the PHA.
  - For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.
  - The PHA may use the verification obtained during an interim reexamination for an annual reexamination if there have been no other changes to annual income since the interim reexamination.
  - Documents may be supplied by the family or received from a third-party source.
  - Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice/letters of hire/termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.
- The PHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.
- For new sources of income where pay stubs are not available, the PHA should use the traditional third-party verification form.



- The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated or illegible.
  - The PHA must explain this to the family and request additional documentation.

### **LEVEL THREE: WRITTEN THIRD-PARTY VERIFICATION FORM**

- This type of verification is a form developed by the PHA and used uniformly for all families when needed to collect information from a third-party source. This is known as “traditional third-party verification.” PHAs send a PHA-developed form directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset).
- The PHA may use this method when higher forms are unavailable or are rejected by the PHA or when the family is unable to provide acceptable verification. Under HOTMA, the PHA may skip this level of verification and may instead substitute oral third-party verification before moving to self-certification.

### **LEVEL TWO: THIRD-PARTY ORAL VERIFICATION**

- For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.
- Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.
- PHAs must document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.
- Under HOTMA, the PHA may skip this level of verification if they attempted written third-party verification via a form and the source did not respond and move directly to self-certification.

**LEVEL 1: NON-THIRD-PARTY VERIFICATION: SELF-CERTIFICATION**

- Non-third-party verification consists of a signed statement of reported income and/or expenses. This verification method should be used as a last resort when the PHA has not been successful in obtaining information via all other required verification techniques.
- Self-certification, however, is an acceptable form of verification when:
  - A source of income is fully excluded
  - Net family assets are less than or equal to the HUD-published threshold and the PHA has adopted a policy to accept self-certification
  - The family declares that they do not have any present ownership in any real property
  - A family reports zero income
  - A family states that they have non-recurring income that will not be repeated in the coming year; and/or
  - The PHA has adopted a policy to implement streamlined verification for fixed sources of income
- When the PHA was required to obtain third-party verification but instead relies on self-certification, the family's file must be documented to explain why third-party verification was not available.
  - HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

**Documenting the Absence of Third-Party Verification**

- There are acceptable reasons for not having third-party verification of an income or expense item in an applicant's or participant's file.
  - For income, assets and expenses:
    1. No documentation is available through UIV techniques or written third party.
    2. PHA staff has made efforts to obtain written third-party verification form in accordance with PHA policy, and the source of verification has not responded.
    3. A third-party source that has been asked to provide written third-party verification form does not have the capability of sending such verification directly to the PHA or of facilitating oral third-party verification.

- When written third-party verification form is requested and not received, an applicant's or participant's file should contain documentation of PHA efforts.
  - The documentation should include the following information:
    - Date and time of the initial request and all follow-ups
    - The name of the company and the person to whom the request was sent
    - A notation that no response was received and an explanation of the reason, if known.
- All file notations made by staff members should be:
  - Complete
  - Dated
  - Limited to facts (not opinions)
  - Signed or initialed

### Verifying Income Exclusions

- All exclusions and excluded amounts associated with the members of a family should be:
  - Declared by the family
  - Reported by the family's PHA in field 7e of form HUD-50058.
    - HUD does not require fully excluded income to be reported on the form HUD-50058. However, PHA procedure should ensure consistency in reporting.
- PHAs need to obtain verification for an income exclusion if, without that verification, they would not be able to determine whether or not the income is to be excluded.
- The type of verification needed for exclusions may differ.
  - **Example 1:** For payments received under federally mandated exclusions such as food stamps, a PHA would have to verify, at a minimum, the source of the income.
  - **Example 2:** For the wages of a child under 18, a PHA would have to verify the age of the child but not the amount of the wages.
- For some exclusions, UIV and/or third-party verification of both the source and the amount may be required for proper calculation.

- Another reason agencies do not score well under this indicator: overscoring.
  - Only review required elements under this indicator.
    - **Example:** File is correct, except the incorrect payment standard was used. This file passes the Indicator 3 review. Address the error but count as accurate.

### **Getting Proof**

- Copy of calculation and verification policies
- Form HUD-50058, family declarations, verifications
- PHA utility allowances

## Sample Verification Monitoring Form

Name \_\_\_\_\_

Type of Verification	EIV	UIV other sources	3rd Party Tenant- Provided Docs	3rd Party Verification Form		Self- Declaration	Remarks
				Sent	Received		
Income	Social Security/SSI/SSD						
	Railroad Retirement						
	Veteran's Administration						
	Welfare						
	Child Support						
	Employment						
	Pension						
	Unemployment Compensation						
	Worker's Disability Comp						
	Educational Assistance						
Assets	Checking						
	Savings						
	Savings Certificates						
	Contract for Deed						
	Real Estate						
	Stocks/Bonds						
	Credit Union						
	Life Insurance						
	Medical:						
	Insurance Premiums						
Expenses	Payment Plan						
	Rx (Pharmacy)						
	Child Care						
	Disability Assistance						
Other	Educational Status						
	Verification of Disability						

**Data Gathering Process and Forms**

***Standard: The PHA correctly calculates adjusted income, obtains third party verification or documents why it was impossible to get, and uses appropriate utility allowance in calculation of rent.***

**Compliance Requirement**

- At the time of a family's admission and at the time of annual reexamination of adjusted income, the PHA must obtain third-party verification of:
  - Reported family annual income,
  - The value of assets,
  - Expenses related to deductions from annual income, and
  - Other factors that affect the determination of adjusted income, and/or
  - Must document the tenant file to show why third-party verification was not available.
- In general, the family's self-declaration of the numbers of its members, their ages, and their relationship to the head does not require independent verification unless there is PHA uncertainty concerning these factors.
- The PHA must use the verified information in determining adjusted income.
- Where the family is responsible for utilities under the lease, the PHA must use the appropriate utility allowances for the unit leased in determining the gross rent for the unit. (24 CFR part 5 Subpart F and 982.514-517)

**Verification Methods [Reference: Notice PIH 2017-12]**

- Per Notice PIH 2017-12, HUD's verification hierarchy, in order from most preferable to least preferable, is as follows:
  - EIV data
  - Other non-HUD upfront verification sources
  - Written third-party documents, including documents provided by the family
  - Standardized third-party verification forms
  - Oral third-party verification
  - Tenant declaration
- In the verification hierarchy, the only form of verification that is not considered to be third party is the tenant declaration. While this method of verification is used as a last resort, it is sometimes the only possible choice.
  - The regulations require that the file must be documented as to why third-party verification was not available.

- Verification policies in the administrative plan must be revised to reflect the current HUD requirements.
- Family files must be documented to explain any deviations from the PHA's written policies.

**Audit Objective**

- The PHA properly verifies and determines adjusted income and uses the appropriate utility allowances in determining gross rent.

**Suggested Procedures for Audit**

- PHA auditors should randomly select a sample of tenant files for review.
- PHA files include third-party verification of:
  - Reported family annual income,
  - The value of assets,
  - Expenses related to deductions from annual income, and
  - Other factors that affect the amount of assistance, and/or
  - That the tenant file is documented to show why third-party verification is not possible.
- PHA properly attributes and calculates allowances for any medical, child care, and/or disability assistance expenses.
- Where the family is responsible for utilities under the lease, the PHA uses the appropriate utility allowances for the unit leased.

**Sample Sizes**

- The number of tenant files to be randomly selected for audit is as follows:

Estimated Families Assisted	Number of Files to be Selected
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

**Audit File Documentation**

- PHA auditors should review a sampling of files, comparing the information in the file to each family's form HUD-50058. An internal audit file should be prepared, using the information on the form below.
- To determine whether annual income was correctly calculated, the auditors will determine whether the PHA followed the verification hierarchy as in the PHA's administrative plan, documenting if a lower level of verification had to be used. The auditor will then compare the calculations and income (including income from assets) on the form HUD-50058 to their independent calculations.
- To determine whether adjusted income was correctly calculated, the auditors will determine whether the PHA followed the verification hierarchy as in the PHA's administrative plan, documenting if a lower level of verification had to be used. The auditor will then compare the allowed deductions on the form HUD-50058 to their independent calculations.
  - This includes comparing the allowance information to the appropriate factor, such as age or disability of the head or spouse and age, disability, or full-time student status of other family members.
- To determine whether the correct utility allowance was used, the auditors will compare the list of tenant-furnished utilities on the RFTA, HAP contract, and lease.
- The auditor will review the HQS inspection records to determine the unit type and the number of bedrooms in the unit.
- Using the above information, the auditor will calculate the utility allowance based on the appropriate utility allowance schedule. The auditor will then determine if the correct utility allowance amount was used.



- ☐ The auditors will determine the period to be reviewed (suggest prior 12 months).
- ☐ The auditors will pull sampling of files and review whether:
  - Annual income was included or excluded properly
  - Asset income was properly calculated
  - Third-party verification was used or statement in the file as to why it was impossible to obtain.
  - Calculation of annual income and adjustments was correct.
  - The correct utility allowance was used.



**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has policies for defining income and allowances that comply with HUD regulations.				
<input type="checkbox"/> The PHA has policies for determining reasonable child care expenses.				
<input type="checkbox"/> The PHA has policies for determining reasonable deductions for disability assistance allowances.				
<input type="checkbox"/> The PHA has a policy that defines “regular” versus “sporadic” income/contributions for determining income.				
<input type="checkbox"/> The PHA has verification policy which follows the HUD’s verification hierarchy.				
<input type="checkbox"/> The PHA has a policy for verification timeframes.				
<input type="checkbox"/> PHA policy requires staff to document when a higher form of verification is not available				
<input type="checkbox"/>				

**Procedures/Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has written procedure for verifying and calculating each income type, asset type, and allowance/deduction.				
<input type="checkbox"/> The PHA has a procedure to average income.				
<input type="checkbox"/> The PHA has a procedure for processing changes in income.				
<input type="checkbox"/> The PHA has a procedure requiring staff to document how income/allowances were calculated.				
<input type="checkbox"/> The PHA has a procedure that requires written documentation of how the appropriate utility allowance was determined to be in file.				
<input type="checkbox"/> The PHA has a procedure for calculating and verifying all HUD approved allowances.				
<input type="checkbox"/> The PHA uses HUD's Authorization for Release of Information form only for the purposes identified on the form.				
<input type="checkbox"/> The PHA has and uses appropriate PHA Authorization for Release of Information forms for income/expenses not identified on form HUD-9886.				
<input type="checkbox"/> The PHA has a tracking method to be sure that the verification time limit of 60 days for admissions and policy time limit for recertifications is followed.				
<input type="checkbox"/> The utility allowance schedule applicable to each family is placed in the tenant file.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA staff are fully trained on verification requirements.				
<input type="checkbox"/> The PHA staff are fully trained on how to calculate income and utility allowances.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a system of regular reviews of income determination calculations				
<input type="checkbox"/> The PHA monitors the reasonableness of the child care, medical, and disability deductions.				
<input type="checkbox"/> A supervisor reviews files to determine accuracy of calculations, data entry, and utility allowance amounts used.				
<input type="checkbox"/> A supervisor reviews files to determine whether proper verification procedures are utilized.				
<input type="checkbox"/> The PHA conducts periodic file reviews to confirm consistency in interpretation of allowance in calculation.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**INDICATOR 4. UTILITY ALLOWANCE SCHEDULE**

- The PHA has reviewed utility rate data within the prior 12 months.
- The PHA has adjusted the schedule if there was a ten percent or more change in the rate since the last utility allowance schedule revision.
- **Note:** It is cost-effective to only revise a utility rate if there was a 10 percent or more change in that rate amount since the last revision. If the PHA only changes the rates that have changed, then the PHA needs a record of the date each utility rate on each utility allowance was revised.
- Points:
  - 5 points: Yes
  - 0 points: No

**Most Common Errors**

- Comparing utility costs instead of utility rates when determining whether to adjust the utility allowance schedule.
- Incomplete/missing documentation of utility rate review and schedule changes.

**HUD Resources**

- Form HUD-52667
- HUD Utility Schedule Model (HUSM)
- HUD Utility Schedule Model (HUSM) Instructions

**Getting Proof**

- Copies of utility allowance schedules
  - This year
  - Last year
- Proof of required study
  - When complete, file in SEMAP records

**Data Gathering Process and Forms**

***Standard: PHA has analyzed utility allowance schedule within last year and adjusted allowance if there was a 10 percent or greater change in the utility rate.***

**Compliance Requirement**

- The PHA must maintain an up-to-date utility allowance schedule.
- The PHA must review utility rate data for each utility category each year and must adjust its utility allowance schedule if there has been a rate change of 10 percent or more for a utility category or fuel type since the last time the utility allowance schedule was revised. (24 CFR 982.517)
- Recommendation: when the utility rate review is completed, and any adjustment made to the utility allowance schedule, forward the documentation to the internal SEMAP auditor for filing in that year's SEMAP records.

**Audit Objective**

- The PHA must have reviewed utility rate data within the last 12 months and adjusted its utility allowance schedule if there has been a rate change of 10 percent or more in a utility category or fuel type since the last time the utility allowance schedule was revised.

**Suggested Procedures for Audit**

- PHA auditors should review PHA procedures for obtaining and reviewing utility rate data each year.
- PHA auditors should review any data on utility rates that the PHA obtained during the last 12 months and determine whether there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised. If so, the auditors will determine whether the PHA revised its utility allowance schedule to reflect the rate increase.

**Audit File Documentation**

- The utility schedule is by unit size and typical unit types in community.
- Utility calculation was done on allowance form or correctly in the software.
- Allowances were properly calculated.
- There should be records from the last annual utility allowance rate and schedule review. This would contain:
  - ☐ The utility allowance schedule being reviewed
  - ☐ The utility schedule is by unit size and typical unit types in the community.
  - ☐ Information obtained from the utility companies regarding rates for specified bedroom sizes and unit types
  - ☐ Possibly some utility bills from families to verify the rates being used and average amount of bills.
- If no utility allowance rate review was completed within 12 months, immediately conduct a review.
- The internal audit file may simply say:
  - ☐ When the utility allowance rates and schedule were reviewed
  - ☐ Where the review records are located
  - ☐ Whether rates increased by 10 percent or more over the prior year, so an adjustment would have been required.
- The form on the next page would document the data for each utility by fuel type. A form like this should be prepared for each unit type requiring a separate utility allowance schedule.
  - ☐ Review the utility allowance review records to determine last review date.
  - ☐ Compare the current utility rate data with rates from the last time the schedule was updated (by utility type/source, if appropriate).
  - ☐ Determine whether there was a 10 percent change in any utility rate.
  - ☐ If yes, update the utility allowance schedule for that rate.



# SEMAP Self-Assessment

## Data Gathering Process/Forms for Indicator 4. Utility Allowance Schedule

Last Review Date:		Structure Type:		
Utility Type	Fuel Type	Last Rate	Current Rate	% Rate Change
Heating	Natural Gas			
Heating	Bottled Gas			
Heating	Oil			
Heating	Electric			
Air Conditioning				
Cooking	Natural Gas			
Cooking	Electric			
Other Electric				
Water Heating	Natural Gas			
Water Heating	Bottled Gas			
Water Heating	Oil			
Water Heating	Electric			
Water				
Sewer				
Trash Collection				
Range				
Refrigerator				
Other				
Unit Size Data for Adjustments:				

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a policy that requires the Utility Allowance to be based on actual rates and average consumption studies, is reviewed on an annual basis, and revised if needed.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has an annual procedure that surveys the actual rates and average consumption data for the various utilities in each of the bedroom sizes accommodated in the voucher program.				
<input type="checkbox"/> The PHA produces an annual report that documents an “Allowance of Utilities and Other Services” including a schedule for each of the type of utilities by bedroom size and structure type and furnishes HUD with the report.				
<input type="checkbox"/> The PHA maintains information supporting its annual review of utility allowances and any revisions made in its Utility Allowance schedule.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Updates of the utility allowance schedule is communicated to the staff with clear effective dates.				
<input type="checkbox"/> Staff is trained to use the lower of the family unit size (voucher size) or actual unit size when applying a utility allowance.				
<input type="checkbox"/> PHA staff are trained to implement changes in the utility allowance schedule according to the requirements.				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a system to ensure that the utility allowance rates and schedule are properly reviewed and documented annually.				
<input type="checkbox"/> The PHA increases the affected utility if the review indicates that the rate has increased by 10 percent or more since the last time the schedule was revised.				
<input type="checkbox"/> The new schedule is implemented at initial lease-up and at the next recertification of the family.				
<input type="checkbox"/>				
<input type="checkbox"/>				

## **INDICATOR 5. HQS QUALITY CONTROL INSPECTIONS**

- PHA performs quality control inspection of units under contract according to HUD audit guide. Sampling drawn from:
  - Recently completed inspections (i.e., performed during the 90 days preceding reinspection)
  - Cross section of neighborhoods
  - Work of cross section of inspectors
- Points
  - 5 points: Yes
  - 0 points: No

### **Most Common Errors**

- Waiting until year's end to perform QC inspections
  - Must be randomly chosen
  - Must be within 90 days/3 months of original inspection
- Allowing original inspection know the inspection will be QC'd
- Failing to discuss any discovered issues with inspector
  - HUD has been known to remove points for a PHA failing to discuss issues with inspector

### **Getting Proof**

- HUD recommends:
  - Copies of QC inspection notification letters that were sent to owner and family
- Original inspection record
- Signed QC inspection form
- Documentation that discrepancies were discussed with inspector

**Data Gathering Process and Forms**

***Standard: Determine whether at least the minimum required number of quality control inspections were performed during previous PHA fiscal year.***

**Compliance Requirement**

- A PHA supervisor or other qualified person must reinspect a sample of units during the PHA fiscal year that meets the minimum sample size requirements for quality control HQS inspections.
- The PHA supervisor's reinspected sample is to be drawn from recently completed inspections (i.e., performed during the three 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) and 985.3(e).

**Audit Objective**

- The PHA must meet the compliance requirement for quality control reinspections.

**Suggested Procedures for Audit**

- The auditors will determine the number that meets the minimum required sample size (based on units under HAP contract during the last completed PHA fiscal year).
- PHA records demonstrate that the PHA reinspected at least the minimum required number of units under contract during the fiscal year audit period.
- Example: PHA's FYE is 12/31
  - How many units under HAP contract for FYE 12/31/22 will determine the minimum number of required HQS QC inspections to take place from 1/1/23 through 12/31/23.
- PHA auditors should review HQS QC inspection records.
  - The PHA should determine what constitutes a 'neighborhood' for this indicator. This may be zip code, census tract, or other 'neighborhood' designation.
  - The PHA should track HQS QC inspections, including information on unit address (including 'neighborhood' designation), who was the original inspector, and when the original inspection took place, as well as who is the QC inspector and when the QC inspection took place.
  - Original and QC unit inspection reports should be maintained as documentation.

- PHA auditors should verify that the sampled files contain a unit inspection report as evidence of a quality control inspection and determine whether the PHA drew its sample of units that were reinspected from recently completed inspections and to represent a cross section of neighborhoods and the work of a cross section of its inspectors.
- The auditor should confirm that the minimum required number of QC inspections took place.

**Sample sizes**

- The minimum number of quality control inspections of units under contract is determined as follows:

Number of units under HAP contract	Number of Files to be Selected
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

**Audit File Documentation**

- The PHA must inspect, as a quality control sample, a minimum file sample based on the number of units under HAP contract annually. Since these are classified in the regulations as “Supervisory Inspections,” the quality control inspection should be conducted by someone at a supervisory level or other qualified person.
- Since HUD gives limited guidance on how quality control inspections are to be done, the HUD Inspection Manual is recommended as a guide. It required that the quality control sample include each staff member who conducted HQS inspections, if possible.
- The results will be more accurate if the quality control inspection is conducted as close as possible to the inspection being reviewed.
- The original inspector cannot be aware that the inspection will undergo a quality control inspection.
- To pass this SEMAP factor, the PHA simply must conduct the minimum number of required quality control inspections, ensuring a cross section of neighborhoods and inspectors work is included in the sampling.
- However, since there are often numerous inspectors of units, and since the PHA wants to be sure their program inspections are consistent, the patterns identified could result in identifying training needs.
- IMPORTANT:** In addition, HUD field offices have been known to take away the HQS QC inspection SEMAP points if there appears to be an issue with an inspector or inspectors that has not been addressed by the PHA. Therefore, follow-up discussions or corrective action should be well documented.





**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> PHA has a policy to conduct at least the minimum required HQS quality control inspections each fiscal year.				
<input type="checkbox"/> PHA policy addresses who will conduct the supervisory quality control inspections, ensuring the designated staff is qualified.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures/Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has internal procedures to:				
<input type="checkbox"/> Identify what constitutes a ‘neighborhood’ for SEMAP purposes.				
<input type="checkbox"/> Determine the minimum number of required HQS QC inspections based on the number of units under HAP contract the previous fiscal year.				
<input type="checkbox"/> Conduct HQS QC inspections throughout the current fiscal year to ensure the inspections happen within 90 days of the original inspections.				
<input type="checkbox"/> Randomly select units for inspection from recently completed inspections.				
<input type="checkbox"/> Track and log HQS QC inspections, including information on the original inspections.				
<input type="checkbox"/> Discuss discrepancies with HQS staff and document such discussions.				
<input type="checkbox"/> Determine if a sufficient cross section of neighborhoods and of inspector’s work has been included in the HQS QC inspections.				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Ensure all inspectors have HQS training.				
<input type="checkbox"/> Meet with staff with problem areas to discuss individual inspection results.				
<input type="checkbox"/> Provide staff training where patterns are identified.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Determine whether the minimum program size is adequate for sampling; where inadequate, increase sampling.				
<input type="checkbox"/> After training and individual counseling on problem areas has been conducted, follow up to determine whether new methods are implemented.				
<input type="checkbox"/> Review inspection scheduling timeframes for adequacy and adjust where needed.				
<input type="checkbox"/>				
<input type="checkbox"/>				

## **INDICATOR 6. HQS ENFORCEMENT**

- PHA must ensure that when a unit fails a HQS inspection:
  - Life-threatening deficiencies are corrected within 24 hours
  - All other HQS deficiencies are corrected within 30 calendar days
- If deficiencies are not corrected within the required time frame, PHA must:
  - (Owner responsibility) stop housing assistance payments or
  - (Family responsibility) take prompt action to enforce family obligations

### **Supervisory Audit for HQS Enforcement**

- All life-threatening fails corrected within 24 hours, or the PHA took appropriate and timely action
- Ninety-eight percent of all other fails corrected within 30 days or PHA-approved time extension, or the PHA takes action as follows:
  - For owner fails: abated HAP no later than the first of the month following the specified correction period or terminates the HAP contract
  - For family fails: take prompt and vigorous action to enforce family obligations

### **Points**

- 10 points: Yes, met criteria
- 0 points: No, didn't meet criteria

### **Manage Beforehand**

- If ONE emergency fail item is not corrected within 24 hours, and not abated/notice of family termination mailed timely, the agency will receive ZERO points under this indicator.

### **Most Common Errors**

- Failure to pull correct data from the software system to properly review the indicator
- Failure to obtain timely data on emergency HQS fails
  - Be sure data is entered into software quickly

### **Steps to Score HQS Enforcement**

1. Determine universe
  2. Run/obtain report of all HQS fails
  3. Capture whether 24-hour or non-24 hour
    - One HQS failure can have both
  4. Capture whether owner-caused or family-caused
    - One HQS failure can be both
  5. For each HQS unit audited, determine:
    - Corrected as of reinspection? Yes or No
    - Verified corrected prior to scheduled effective date of negative action? Yes or No
    - Abated / enforced family obligations timely? Yes or No
- If Yes to one of the above, 'passes' indicator
  - 'Verified corrected prior to the effective date of the negative action'—be sure you mailed out the intent to terminate assistance or abate HAP in a timely manner.
    - If the fail item was corrected prior to the scheduled effective date of the negative action, you have actually rescinded the action, but can document that you were set to take the required action

- To receive a ‘pass’ on a reviewed HQS fail, you must meet requirements for each HQS failure. Example:
  - Unit inspected 4/25/11
  - 1 Emergency fail; family caused
  - 2 Non-emergency fails; owner caused
    - To ‘pass’:
      - The emergency fail must be corrected or family obligations enforced (with a notice of intent to terminate) 5/1; and
      - The non-emergency fails must have been corrected or HAP abated according to PHA policy (Typically, 6/1)

### **Getting Proof**

- Copy of HQS requirements and enforcement policies
- Document showing:
  - Deficiency was corrected timely; or
  - PHA enforced timely
    - (Owner) abated payment
    - (Family) begin termination process
- HUD recommends:
  - Notice of failed inspection
    - Owner
    - Tenant
  - Notices of adverse action
  - Proof of abatement
    - HAP Register

**Data Gathering Process and Forms**

***Standard: PHA ensures deficiencies are corrected within 30 days or PHA-approved extension. If not, PHA abates payment and/or terminates HAP Contract or takes action to enforce family obligations.***

**Compliance Requirement**

- For units under contract that fail to meet HQS, the PHA must require the owner or the tenant to correct:
  - Any cited life threatening HQS deficiencies within 24 hours of the inspections, and
  - All other HQS deficiencies within 30 calendar days or within a specified PHA-approved extension.
- If the owner does not correct the cited HQS deficiencies within the specified correction period, the PHA must stop (abate) HAPs beginning no later than the first of the month following the specified correction period or must terminate the HAP contract.
- The owner is not responsible for a breach of HQS as a result of the family's failure to pay for utilities for which the family is responsible under the lease or for tenant damage.
- For family-caused defects, if the family does not correct the cited HQS deficiencies within the specified correction period, the PHA must take prompt and vigorous action to enforce the family obligations. (24 CFR 982.404)

**Audit Objective**

- The PHA enforces HQS in accordance with the compliance requirement.

**Suggested Procedures for Audit**

- PHA auditors should randomly select a sample of case files with failed HQS inspections during the audit period based on the PHA's logs or records of failed HQS inspections of units under contract.
- Files should document that the PHA required correction of any cited life threatening HQS deficiencies within 24 hours of the inspection and of all other HQS deficiencies within 30 calendar days or within a PHA-approved extension.
- If the correction period has ended, the files should contain a unit inspection report documenting that any PHA-required repairs were completed.
- When the file shows that the owner failed to correct the cited HQS deficiencies within the specified timeframe, documents in the file should show that the PHA properly stopped (abated) HAPs or terminated the HAP contract.

- When the file shows that the family failed to correct the cited HQS deficiencies within the specified timeframe, documents in the file should show that the PHA took prompt and vigorous action to enforce the family obligations.

### Sample sizes

- The number of case files with failed HQS inspections to be randomly selected for audit is as follows:

# of units under contract with a failed HQS Inspection during the FY	Number of Files to be Selected
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

### Audit File Documentation

- This SEMAP factor relates to only units under contract that failed HQS inspection. The PHA must identify whether, according to the HUD regulations, the family or the owner was responsible for correcting the failed item.
- Emergency fail items must be corrected within 24 hours, and non-emergency fails should be corrected by the deadline stated in PHA policy (which can be no more than 30 days from date of initial fail), unless (for non-emergency fails, only) the PHA allowed an extension.
- If those failed items that were the responsibility of the owner were not corrected within the stated time, the PHA should have abated payment no later than the first of the month following the specified correction period.
- If those failed items that were the responsibility of the family were not corrected within the appropriate time, the PHA should have instituted termination of assistance procedures and offered the opportunity for a hearing. Depending on the outcome of the hearing, the PHA should have either terminated the family or, if the fail was determined at the hearing to be the responsibility of the owner, required the owner to make the HQS correction.

- The PHA should use the form below to gather data relating to this factor to create an internal audit file.
  - ☐ The auditors will determine time period to be reviewed (i.e., previous 12 months).
  - ☐ The auditors will select random sample of units under contract with a failed HQS inspection.
  - ☐ Most files will have HQS fails that are the owner's responsibility.
  - ☐ Some files may have HQS fails that are the family's responsibility.
  - ☐ List inspection data for each file.
  - ☐ If HQS-failed files with owner responsibility were not corrected within 30 days or PHA-approved extension, the auditors will determine whether HAP was abated, for how long, and what was the end result.
  - ☐ If HQS-failed files with family responsibility were not corrected within 30 days or PHA-approved extension, the auditors will determine whether action was taken to terminate family's assistance.



## Data Gathering Process/Forms for Indicator 6. HQS Enforcement

[illegible]

\*2. HAP Abated

\*4. No immediate action taken (document)

## Data Gathering Process/Forms for Indicator 6. HQS Enforcement

[illegible]

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> PHA policy clarifies HQS standards, including addressing how the PHA determines whose responsibility an HQS fail item is.				
<input type="checkbox"/> PHA policy clarifies 24 hour fail items.				
<input type="checkbox"/> PHA policy states how long the owner/tenant have to correct non-emergency fail items.				
<input type="checkbox"/> The PHA has a policy that specifies how tenants and owners are notified of housing quality deficiencies and the actions needed to resolve violations of housing quality standards.				
<input type="checkbox"/> The PHA has a policy as to how fail items can be verified as corrected.				
<input type="checkbox"/> The PHA's policy clearly states when abatement will be effective.				
<input type="checkbox"/> The PHA does not "hold" and then release HAP payments for HQS fails after abatement.				
<input type="checkbox"/> The PHA abates no later than the first of the month following the specified abatement period.				
<input type="checkbox"/> The PHA sends a termination of HAP contract notice immediately after the abatement period ends.				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has procedures that track the results of units whose initial or annual or complaint inspection requires deficiencies to be corrected and a reinspection conducted.				
<input type="checkbox"/> The PHA has a letter that notifies tenants and owners of unit housing quality deficiencies and the actions needed to resolve violations of housing quality standards.				
<input type="checkbox"/> The PHA has a system where 24 hour fail items are immediately communicated to the staff that will notify the owner/family and will abate/send termination notices.				
<input type="checkbox"/> The PHA does not abate the owner's payment when the HQS fail is a family obligation.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> If the PHA has variations to the "Acceptability Criteria" these variations are properly documented, approved by HUD and communicated to staff.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has properly trained personnel conducting the HQS inspections				
<input type="checkbox"/> A tracking system is maintained to ensure that all activities are completed in a timely manner.				
<input type="checkbox"/> A tracking system is maintained to ensure that inspections have been conducted either by the anniversary date of the HAP contract or within 24 months of the anniversary date of the HAP contract depending on PHA policy.				
<input type="checkbox"/> A tracking system is maintained to see that rent abatements and HAP contract terminations are completed in a timely manner.				
<input type="checkbox"/> A tracking system is maintained to clearly identify whether owner or family fail and whether PHA properly enforced each.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**INDICATOR 7. EXPANDING HOUSING OPPORTUNITIES**

- For MSAs only (5 points)
- Must have written policy to encourage owner participation outside areas of poverty or minority concentration
- Areas of concentration must be clearly delineated
- PHA must have documentation to show policy was followed
- PHA has maps that show various areas and information about facilities and services (transportation, social services, etc.) outside areas of concentration within PHA jurisdiction and in neighboring jurisdictions
- PHA uses the maps in family briefings
- Information packet has list a of owners willing to lease and other organizations (housing counseling, advocacy groups, service providers) that assist families in finding units
- PHA can demonstrate that these properties or organizations operate outside areas of poverty or minority concentration
- Information packet explains portability and provides a list of contacts at neighboring PHAs
  - Name
  - Address
  - Phone number
- PHA has analyzed the difficulties of voucher holders in finding units outside areas of poverty and minority concentration and, if such difficulties have been found, has analyzed whether to seek area exception payment standard amounts.
- PHA has sought approval for exception payment standard amounts if needed.

**Points**

- 5 points: Yes to all statements
- 0 points: Audit report does not support statements

### **Common Errors**

- Failure to monitor briefings to ensure proper information continues to be given
- Failure to provide required information in briefing packet
  - Ensure that the information packet has
    - A list of owners willing to lease to voucher holders, and
    - Information regarding other organizations (housing counseling, advocacy groups, service providers) which assist families in finding units

### **Helpful Hint**

- To help in your required analysis, require voucher holders to complete a housing search log.
  - Include a field for 'why the unit was not leased'
  - Collect results ongoing, and analyze at least annually to determine whether exception payment standard amounts should be sought
    - Make periodic phone calls to owner to verify housing search log data

### **Getting Proof**

- Documentation backing up each item on the checklist

**Data Gathering Process and Forms**

***Standard: PHA has written policy encouraging program participation by owners of units outside poverty or minority concentration areas; and informs families of housing opportunities in non-concentrated areas.***

**Compliance Requirement**

- PHAs with jurisdiction in metropolitan statistical areas (MSAs) must:
  - Implement a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration;
  - Inform voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and
  - Supply a list of landlord or other parties who may be willing to lease units or help families find units or help families find units. (24 CFR 982.54(d)(5), 982.153(b)(3) and (b)(4), 982.301(a), 982.301(a) and (b)(4) and (b)(12) and 985.

**Audit Objectives**

- For a PHA with jurisdiction in an MSA:
  - The PHA's written policy to encourage participation by owners of units located outside areas of poverty or minority concentration should clearly delineate areas in its jurisdiction that the PHA considers areas of poverty or minority concentration, and the policy includes actions the PHA will take to encourage owner participation;
  - PHA documentation should show that the PHA has taken actions indicated in its written policy to encourage participation by owners of units located outside areas of poverty and minority concentration;
  - The PHA should have prepared maps that show various areas with housing opportunities outside areas of poverty and minority concentration both within the PHA's jurisdiction and neighboring its jurisdiction, and the PHA should have assembled information about job opportunities, schools and services in these areas and can demonstrate that it uses the maps and related information when briefing voucher holders;
  - The PHA's information packet for voucher holders should contain either a list of owners who may be willing to lease or know of properties available for lease under the 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 and minority concentration.



***Example***

- The PHA's information packet should include an explanation of how portability works and includes a list of neighboring housing agencies with the name, address, and telephone number of a portability contact person at each for use by families who move under portability.
- The PHA should have analyzed whether voucher holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, if such difficulties have been found, PHA documentation should show that the PHA has considered whether it is appropriate to seek approval of area exception payment standard amounts in any part of its jurisdiction and has sought HUD approval of exception payment standard amounts when necessary.

**Suggested Procedures for Audit**

- PHA auditors should review the PHA's written policy to encourage participation by owners of units located outside areas of poverty or minority concentration and determine whether it clearly delineates areas in the PHA's jurisdiction that the PHA considers areas of poverty or minority concentration, and determine whether the policy includes actions the PHA will take to encourage owner participation;
- PHA auditors should ask the PHA for any documentation it has that demonstrates that the PHA took actions indicated in its written policy to encourage participation by owners of units located outside areas of poverty and minority concentration;
- PHA auditors should ask to see the maps the PHA has prepared that show various areas, both within and neighboring its jurisdiction, with housing opportunities outside areas of poverty and minority concentration, and the auditors will ask the PHA to show any information it has assembled about job opportunities, schools, and services in these areas. Also, the auditors will ask the PHA to demonstrate that it uses the maps and information when briefing voucher holders;
- PHA auditors should randomly select an assembled PHA information packet for voucher holders and review the packet to determine whether it contains either a list of owners who may be willing to lease (or properties available for lease) under the housing choice voucher program, or a current list of other organizations that will help families find units;
  - The final two pages of Notice PIH 2016-09 include a HUD document explaining portability that may be used by PHAs.
- PHA auditors should ask the PHA to demonstrate that the list includes properties or organizations that operate outside areas of poverty or minority concentration;

- PHA auditors should review the randomly selected information packet to determine whether it includes an explanation of how portability works and includes a list of neighboring housing agencies with the name, address and telephone number of a portability contact person at each for use by families who move under portability;
- PHA auditors should ask the PHA to show documentation of any analysis of whether voucher holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, if such analysis showed such difficulties, the auditors will ask whether the PHA has documentation that shows that it has considered whether it is appropriate to seek approval of area exception payment standard amounts in any part of its jurisdiction and whether the PHA sought HUD approval of exception payment standard amounts when necessary.

**Audit File Documentation for Expanding Housing Opportunities**

- The PHA audit file should include a description of the methodology used in implementing the policy used to encourage owners of units located outside of poverty or minority concentrated areas to participate in the housing choice voucher program.
- The PHA audit file should include a description of the adopted policy and/or program that provides information to voucher holders and includes the availability of rental opportunities in areas outside poverty or minority concentration areas.
- An appropriate demonstration by the PHA for the auditor would be to provide a detailed description of an outreach program and/or copy of a housing brochure/handout given to all families being issued vouchers that includes information regarding:
  - Housing opportunities in areas not typically selected by participating families
  - Tips on how to search for housing, including other parties that may be able to help with referrals to available units in areas outside poverty or minority concentrated area
  - Fair Housing laws and appropriate procedures when faced with discrimination
  - Personal benefits of moving outside of concentrated area, such as greater opportunities for employment, better schools, housing quality, and security

- The PHA sample briefing packet informs the family that the PHA makes available upon the family's request a regularly updated list of landlords and or other sources that are willing to lease units or help families find units, including units located outside poverty or minority concentrated areas.
- The PHA documentation should include proof that the PHA took actions outlined in policy, such as sign-in sheets from owner workshops or marketing materials that were sent to landlords with properties in areas outside poverty or minority concentrated areas.
- The PHA should have a procedure for tracking and analyzing whether families are experiencing difficulties attempting to move into non-concentrated areas, and the PHA should provide a report including the following information:
  - Number of vouchers issued for the period
  - Number of families leased up
  - Number of families whose vouchers expired
  - Percentage of families who leased up in non-concentrated areas
  - Percentage of families whose vouchers expired while attempting to move into non-concentrated areas

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> PHA has a written policy that encourages program participation by owners with units located outside of concentrated areas.				
<input type="checkbox"/> PHA has a policy to inform and encourage voucher holders regarding benefits of moving to non-concentrated areas.				
<input type="checkbox"/> PHA has a policy that provides information and cooperation to families interested in moving outside of the PHA's jurisdiction.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has implemented procedures that carry out these policies by practicing the following: <ul style="list-style-type: none"> <li><input type="checkbox"/> System in place to foster cooperative relationships with owners having units inside and outside poverty or minority concentration areas, such as:               <ul style="list-style-type: none"> <li>• An owner's workshop,</li> <li>• An effective marketing program, and/or</li> <li>• Specific area of agency that addresses landlord public relations concerns, such as a system for receiving feedback from owners who have or are experiencing problems associated with the program.</li> </ul> </li> </ul>				
<input type="checkbox"/> System for performing outreach to families for the purpose of educating them on the benefits of moving outside of concentrated areas				
<input type="checkbox"/> Housing opportunity information readily available and in sight in PHA reception area				
<input type="checkbox"/> System for monitoring and analyzing lease-up statistics to determine whether progress is being made				
<input type="checkbox"/> System for receiving and analyzing feedback from families attempting to move into non-concentrated areas				
<input type="checkbox"/> Partnership with the local Fair Housing counseling office for the purpose of ensuring that families who are trying to lease up in concentrated and non-concentrated areas have success				
<input type="checkbox"/> PHA has and uses maps that show various areas with housing opportunities located outside areas of concentration and within its jurisdiction in neighboring jurisdictions and includes this information when briefing families.				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Staff are trained on the importance of encouraging families to broaden their scope of target areas when looking for units.				
<input type="checkbox"/> Staff are informed of PHA goals in regard to encouraging and fostering better relationships between families needing housing and owners with available units.				
<input type="checkbox"/> Staff are trained on PHA procedures and are aware of the appropriate levels of response when faced with inquiring landlords or families facing potential problems in terms of locating available units.				
<input type="checkbox"/> Staff are trained on this SEMAP indicator to understand the importance of including required material in briefings.				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> PHA has an established procedure regarding methods of monitoring and analyzing family lease-up patterns.				
<input type="checkbox"/> PHA has an established procedure for analyzing and determining progress regarding housing opportunities for families.				
<input type="checkbox"/> PHA briefing information packet includes information regarding portability and a list of portability contacts at neighboring PHAs.				
<input type="checkbox"/> PHA has a procedure for documenting difficulties families may be experiencing in regard to locating available units outside of concentration areas.				
<input type="checkbox"/> PHA has an established procedure for determining necessity for approval of exception payment standard amounts where appropriate for housing opportunities.				

**INDICATOR 8. PAYMENT STANDARDS**

- The PHA must adopt payment standards for the voucher program, by unit size, *for each FMR area* in the PHA jurisdiction and, if applicable, *for each PHA-designated part of an FMR area*, that are between 90-110 percent of the HUD-published FMR.
- PHAs should provide their *latest* payment standard schedule in force at the time of the FYE
- Only include payment standards within the PHA's discretion to set- don't include any exception payment standard schedules that were approved by HUD, but include comments so that HUD knows.
- PIC will review each payment standard schedule and will flag (in red) any payment standard that is outside the basic range.
- HUD field office will review to see if the PHA used the correct FMR
- If any payment standard schedule contains a payment standard that is out of range from the appropriate FMR, the field office will assign 0 points for the indicator.

**Points**

- 5 points                      All payment standards on all PHA payment standard schedules are within the basic range (unless the PHA qualified for and enacted exception payment standards, PHA must notify HUD)
- 0 points                      Statement is not true

**Common Error**

- Rounding 'up' or rounding 'down'
  - Must round 'in.' Example:
    - 110% of FMR = \$870.85. PHA sets payment standard at \$871.
      - Is \$0.15 out of the basic range. Round in: \$870
    - 90% of FMR = \$806.45. PHA sets payment standard at \$806.
      - Is \$0.45 out of the basic range. Round in: \$807

***Standard: Housing Choice Voucher Program Payment Standard***

- The voucher payment standard for each bedroom size must be between 90 percent and 110 percent of the current FMR. The area exception payment standard amount is used when HUD has approved an exception payment standard amount for the area in which the family has leased. An internal audit file should be created with the information on the form below.
- ☐ PHA auditors should determine: Are all payment standards on the payment standard schedule in effect as of the PHA's FYE between 90 percent and 110 percent of the FMR for each bedroom size in each FMR area within the jurisdiction?

☐ Yes      ☐ No

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a policy that requires it to review all payment standards any time HUD publishes new FMRs.				
<input type="checkbox"/> The PHA has a policy that requires it to adopt a new payment standard schedule in a timely manner if needed to ensure payment standards are within the required basic range.				
<input type="checkbox"/> The PHA has a policy that defines when updated payment standard amounts are applied to participant families.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures/Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has adopted a payment standard schedule for its housing choice voucher program, including:				
<input type="checkbox"/> standards for each FMR area (if the PHA operates in more than one area);				
<input type="checkbox"/> by unit size (0-bedroom, 1-bedroom, etc.); and				
<input type="checkbox"/> includes, if applicable, HUD-approved exception payment standard amounts.				
<input type="checkbox"/> The PHA adjusts their payment standard schedule so that:				
<input type="checkbox"/> the standard will not be more than 110 percent of the FMR; and				
<input type="checkbox"/> will not be less than 90 percent of the current FMR, unless a lower percentage is approved by HUD.				
<input type="checkbox"/> The PHA has procedures when to request exception payment standard amount area approvals from HUD and, if approved, how to implement.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Staff have received training on the housing choice voucher program.				



## Data Gathering Process/Forms for Indicator 8. Payment Standards

<input type="checkbox"/> Staff have received training and understand how and when to apply increased or decreased payment standards in accordance with the program requirements and PHA policy.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> When establishing new payment standard schedules, the PHA ensures all payment standards are within the basic range.				
<input type="checkbox"/> If applicable, the PHA has clearly defined the HUD exception payment standard amount areas.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

## **HUD INDICATORS VERIFIED THROUGH IMS/PIC**

### **IMS/PIC Reports**

- Fiscal year to date SEMAP information available through IMS/PIC include:
  - PHA reporting rate
  - Results for Indicator 9: Annual Reexaminations
    - Listing of families whose last regular reexamination was effective at least 14 months prior
  - Results for Indicator 10: Correct Tenant Rent Calculations
    - Listing of families with a correct tenant rent calculation issue
  - Results for Indicator 11: Pre-Contract HQS Inspections
    - Listing of families whose HAP Contract was effective prior to the date the unit passed its move-in inspection
  - Results for Indicator 12: Regular HQS Inspections
    - Listing of families whose last HQS inspection took place at least 26 months prior
  - Results for Indicator 14: Family Self-Sufficiency Enrollment
    - Listing of each FSS participant family
    - Listing of each family with a positive escrow amount/amount disbursed
- Final FYE data will come from last available summarization of data preceding beginning of the PHA's fiscal year
  - PHAs with 9/30 FY
  - HUD will use data through August, summarized in mid-September

### IMS/PIC Reporting Rate

- If a PHA has not reported at least 94.5 percent of its program participants to IMS/PIC, any indicator for which HUD verifies performance using IMS/PIC data will be rated zero!

Number of families reported to PIC

Number of families administered\*

\*Average number of units leased in last fiscal year (from VMS)

*Plus* families porting in, for which the PHA is billing

*Minus* families porting out for which the PHA is being billed

### IMS/PIC Factors

- Factors affected by the 94.5 percent reporting rate include:
  - Annual reexaminations 10 Points
  - Correct tenant rent calculations 5 Points
  - Pre-contract HQS inspections 5 Points
  - Family self-sufficiency 10 Points
  - Annual HQS inspections 10 Points
- PHA will get zero for each of these if a 95 percent reporting rate is not achieved.
  - In practical use, HUD appears to round 94.5% to 95%

## INDICATOR 9. ANNUAL REEXAMINATIONS

- The PHA must complete a reexamination for each participating family at least every 12 months.
- IMS/PIC SEMAP Indicators Report shows the percent of families with late annual reexams.
  - Based on number of families whose last regular reexamination was effective at least 14 months prior.
  - The extra two months is to allow all reexams to be submitted to HUD's data base.
    - Must be less than 5 percent for full 10 points.
  - Clicking on the "+" gives a list of families whose reexams are late.

### Points

- 10 points            Less than 5 percent are late
- 5 points             5–10 percent are late
- 0 points             More than 10 percent are late

### Common Errors

- Using incorrect Action Codes
  - Action Code 2 "Annual Reexamination"
  - PHA can use Action Code 7 "Other Change of Unit," but
    - Must change "projected effective date of next reexamination" (form HUD-50058, field 2i) for HUD "clock" to reset.
    - Must actually conduct an annual reexamination with the family's move
- Failure to monitor ongoing and take necessary actions

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a policy that requires it to conduct a reexamination of family income and composition at least annually, according to HUD program guidelines.				
<input type="checkbox"/> The PHA has a policy that states whether the PHA will conduct a new annual recertification when a family moves to a new unit.				
<input type="checkbox"/> The PHA has a policy that states whether the PHA will conduct a new annual recertification when a family enters into a new lease at their current unit.				
<input type="checkbox"/> The PHA has a policy regarding the number of appointments that can be missed before a termination of assistance letter is sent to the family.				
<input type="checkbox"/> The PHA has a policy that states that a family's failure to comply with reexamination requirements is grounds for termination of assistance.				
<input type="checkbox"/> The PHA has a policy that requires the annual reexamination be implemented as of the scheduled effective date, even if other annual activities are not completed.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA produces a monthly listing of families under contract.				
<input type="checkbox"/> The PHA has a procedure that identifies and notifies program participants who will be up for reexamination 120 days in advance.				
<input type="checkbox"/> The PHA sends out a reexamination notice to families with a copy routed to the staff person responsible for reexamination follow up.				
<input type="checkbox"/> The PHA has a process and responds appropriately to requests for accommodation by a person with a disability in the reexamination notification process.				
<input type="checkbox"/> The PHA has a tracking system that identifies when a participant does not show up for their reexamination appointment and sends out a second appointment notice.				
<input type="checkbox"/> The PHA has a tracking system that identifies program participants who do not show up for their second scheduled reexamination appointment and notifies them they will be terminated from the program.				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a system of reexamination that has as its goal that all reexamination activities are completed, all forms/leases signed, and proper notifications sent 31 days prior to the scheduled reexamination date.				
<input type="checkbox"/> The PHA has a process that allows adjustments in implementing changes in family rent, if the family causes an unreasonable delay in the reexamination processing.				
<input type="checkbox"/> The PHA issues a voucher if the family decides to move and monitors the family's progress in locating an appropriate unit.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has its reexamination procedures clearly detailed				
<input type="checkbox"/> PHA staff have been trained on the reexamination procedures and understand the processes to carry them out.				
<input type="checkbox"/> Specific staff (or department) have been assigned the responsibility of managing requests for rent adjustments and other monetary changes.				
<input type="checkbox"/> There are clear performance expectations among and between staff.				
<input type="checkbox"/> Where there are a number of staff with inter-related responsibilities, the PHA has a system that keeps the staff in communication on the progress of the tenant through the recertification process.				
<input type="checkbox"/> There is a well-managed tracking system that ensures returned verifications of information are placed in the tenant file.				
<input type="checkbox"/> Consistent procedures for file organization and documentation are communicated to staff.				
<input type="checkbox"/> Staff is trained on HUD changes that affect recertifications in a timely manner.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The department supervisor conducts periodic staff meetings to confirm the status of recertifications.				
<input type="checkbox"/> Management or supervisors are tasked with logging into IMS/PIC monthly and reviewing for late reexaminations, problem solving any listed families.				
<input type="checkbox"/> The PHA monitors monthly IMS/PIC response to ensure proper data submissions.				
<input type="checkbox"/> The PHA makes corrections within the month of receipt of IMS/PIC error reports for this indicator.				
<input type="checkbox"/> Staff training is provided to eliminate IMS/PIC errors.				
<input type="checkbox"/> Where reexaminations are late, the supervisor determines the cause and implements corrective measures.				
<input type="checkbox"/>				
<input type="checkbox"/>				



**INDICATOR 10. CORRECT TENANT RENT CALCULATIONS**

- PHA correctly calculates family's share of rent to owner in voucher program based on data sent to HUD by the PHA on forms HUD-50058.
- IMS/PIC *SEMAP Indicators Report* shows the percent of tenant rent and family's share of rent to owner calculations that are incorrect based on data on form HUD-50058
  - Must be 2 percent or less discrepancies for 5 points
- IMS/PIC *Tenant Rent Discrepancy Report* gives list of families with rent discrepancies
  - Data used for verification do not include rent calculation discrepancies for manufactured home owner rentals of manufactured home spaces for proration of assistance under the noncitizen rule

**Points**

- 5 points              Less than or equal to 2 percent rent calculation discrepancies
- 0 points              Greater than 2 percent rent calculation discrepancies

**Be Aware**

- HUD has been known to take away the 5 points from PHAs that failed Indicator 3: Determination of Adjusted Income
  - At the field office's discretion

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has policies that provide guidance in all rent calculation areas.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has written procedures that detail the process of calculating Total Tenant Payment (TTP).				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> All staff who work with rent calculations have received training in rent calculations.				
<input type="checkbox"/> Staff receive periodic training on changes to the program that modify job duties and effect on program participants.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA performs a certain percentage of quality control rent calculations.				
<input type="checkbox"/> The PHA shows calculations on the HUD 50058 or other worksheet that can be easily reviewed by quality control.				
<input type="checkbox"/> The PHA supervisor periodically reviews tenant files drawn at random to determine level of quality control.				
<input type="checkbox"/> The PHA periodically reviews IMS/PIC Summary Data for this indicator.				
<input type="checkbox"/> The PHA monitors monthly IMS/PIC response to ensure proper data submission for this indicator.				
<input type="checkbox"/> The PHA makes corrections within the month of receipt of IMS/PIC error reports for this indicator.				
<input type="checkbox"/> Staff training is provided to eliminate IMS/PIC errors.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

## **INDICATOR 11. PRE-CONTRACT HQS INSPECTIONS**

- Newly leased units must pass HQS inspection on or before the HAP contract effective date.
  - If the PHA employed the PHA initial inspection option for non-life-threatening (NLT) deficiencies or alternative inspections, the timing requirements for the applicable PHA inspection option must be met.

### **Points**

- 5 points      98–100 percent passed on or prior to effective date
- 0 points      Less than 98 percent passed on or prior to effective date

### **Common Errors**

- Data entry
- Using HQS inspection data entry fields incorrectly in the software.

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a policy that documents compliance with HUD's HQS requirements and acceptability criteria.				
<input type="checkbox"/> The PHA has a policy that at lease-up inspections, units not meeting HQS must be repaired, reinspected, and pass HQS before a HAP contract can be executed.				
<input type="checkbox"/> The PHA has a policy that details the process of notifying tenants and owners of unit housing quality deficiencies and the actions needed to resolve violations of housing quality standards.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a system that tracks when inspections are conducted, their outcome, and the process of problem resolution (if any), followed (if appropriate) by a reinspection.				
<input type="checkbox"/> The PHA has a procedure that uses HUD's Inspection form (HUD-52580) or HUD's inspection checklist (HUD-52580A) for the inspection of all units to ensure compliance with HQS.				
<input type="checkbox"/> The PHA has a written procedure that guides staff through the process of inspecting a unit, informing owners of any deficiencies and reinspecting before the HAP contract can be executed.				
<input type="checkbox"/> The PHA has a procedure that notifies tenants and owners of unit housing quality deficiencies and the actions needed to resolve violations of housing quality standards.				
<input type="checkbox"/> The PHA has procedures that ensure that proper communication has been made with the tenant, owner and other PHA departments when there are HQS deficiencies to resolve.				
<input type="checkbox"/> The PHA utilizes a check list to ensure all requirements have been met — including the unit passing HQS inspection — before the HAP contract is executed by the PHA.				
<input type="checkbox"/> A manager or supervisor logs into IMS/PIC monthly to identify any families listed where the unit passed HAS after the effective date of HAP contract and reviews to determine if there was a data entry error.				
<input type="checkbox"/> The PHA has properly trained personnel conducting HQS inspections.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a process that informs the accounting staff when it is appropriate to begin payments on a HAP contract with assurances that the unit is in compliance with HQS.				
<input type="checkbox"/> The PHA has a documented process that tracks the status of units awaiting inspections and reinspections before the execution of the HAP contract.				
<input type="checkbox"/> Staff is trained on the proper use of housing software, including HQS data entry fields.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a process that ensures a periodic and independent review of inspections performed at initial lease-up.				
<input type="checkbox"/> The PHA has a process to ensure the documentation of the inspection is properly filed in the tenant file.				
<input type="checkbox"/> The PHA periodically reviews IMS/PIC Summary Data for this indicator to identify files showing that the unit passed HQS after the effective date of the HAP contract.				
<input type="checkbox"/> The PHA monitors monthly IMS/PIC response to ensure proper data submission for this indicator.				
<input type="checkbox"/> The PHA makes corrections within the month of receipt of IMS/PIC error reports for this indicator.				
<input type="checkbox"/> Staff training is provided to eliminate IMS/PIC errors.				
<input type="checkbox"/> Where the unit did not pass HQS prior to the effective date of the HAP contract, the supervisor determines the cause and implements corrective measures.				
<input type="checkbox"/>				
<input type="checkbox"/>				

## **INDICATOR 12. REGULAR HQS INSPECTIONS**

- Regulations: The PHA inspects each unit under contract at least biennially.

### **Points**

- 10 points      Less than 5 percent inspections late
- 5 points        5–10 percent late
- 0 points        More than 10 percent late
- Action code 13 on form HUD-50058 allows reporting of annual/biennial HQS inspections at the time they occur.
- For regular HQS inspections only, if the 50058 is submitted within two months of the annual reexamination effective date, the HQS inspection date can be put in on line 5i and submitted with the annual reexamination.
- If the inspection is not done within two months of the annual reexam, it must have its own 50058.
- HUD measures this indicator in IMS/PIC based on a 24-month inspection requirement for all PHAs. Any PHA with a policy to conduct HQS inspections more often than biennially must follow that policy, despite the 24-month SEMAP measurement.

### **Most Common Errors**

- Failure to monitor ongoing and take necessary actions.



**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a policy that requires an inspection of the unit for HQS compliance annually or biennially while the tenant remains in occupancy.				
<input type="checkbox"/> The PHA has a policy that documents compliance with HUD's HQS requirements and acceptability criteria.				
<input type="checkbox"/> The PHA has a policy regarding the number of HQS appointments that can be missed before a termination of assistance letter is sent to the family.				
<input type="checkbox"/> The PHA has a policy that states that a family's failure to comply with HQS inspection requirements is grounds for termination of assistance.				
<input type="checkbox"/> The PHA follows its HQS policies.				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> PHA procedures ensures that inspection of the unit is completed with 12 months of the last annual inspection or 24 months of the last biennial inspection depending on PHA policy.				
<input type="checkbox"/> PHA procedures require a supervisor or manager to run monthly reports reflecting which HQS inspections are due.				
<input type="checkbox"/> PHA procedures require HQS inspections to be scheduled with letters mailed at least two months prior to the month due.				
<input type="checkbox"/> PHA procedures ensure timely rescheduling of HQS inspections if requested or needed for administrative purposes.				
<input type="checkbox"/> PHA procedures ensure the software is updated with the date of the full HQS inspection in a timely manner, regardless of whether the unit passed or failed the HQS inspection.				
<input type="checkbox"/> The PHA has procedures that ensure that the documentation associated with the HQS inspections is properly documented in the tenant file.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Staff is fully trained on regulatory and policy requirements regarding timeliness of HQS inspections.				
<input type="checkbox"/> Staff is trained on inputting results of regular HQS inspections timely into housing software.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has properly trained personnel conducting the HQS inspections.				
<input type="checkbox"/> A tracking system is maintained to ensure that all activities are completed in a timely manner.				
<input type="checkbox"/> A tracking system is maintained to ensure that inspections have been conducted within 12 months of the last annual inspection or 24 months of the last biennial inspection depending on PHA policy.				
<input type="checkbox"/> The manager or supervisor reviews IMS/PIC Summary Data for this indicator each month, problem solving any listed family files				
<input type="checkbox"/> The PHA monitors monthly IMS/PIC response to ensure proper data submission for this indicator.				
<input type="checkbox"/> The PHA makes corrections within the month of receipt of IMS/PIC error reports for this indicator.				
<input type="checkbox"/> Staff training is provided to eliminate IMS/PIC errors.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

**INDICATOR 13. LEASE-UP**

- This indicator measures whether the PHA executes HAP contracts for the number of the PHA's baseline voucher units (units that are contracted under a consolidated ACC) for the calendar year that ends on or before the PHA's fiscal year or whether the PHA has expended its allocated budget authority for the same calendar year.

**LEASE-UP INDICATOR ASSESSMENT PERIOD**

- All PHAs are measured under this indicator based on calendar year (CY), regardless of the PHA's fiscal year end.
  - If a PHA's fiscal year ends other than on December 31, the PHA will be measured under this indicator based on the calendar year that ended prior to the fiscal year end,
  - All PHA leasing and expense data, as well as any known prior months' corrections for the CY should be in VMS no later than January 22nd.
- Once the Financial Management Center (FMC) has provided leasing and expense information from VMS to the field offices for SEMAP scoring, any appeals of the SEMAP leasing indicator score related to data reporting will only be considered for circumstances outside of the PHA's control (e.g., late portability payment from a receiving PHA for multiple months).

**LEASE-UP CALCULATION**

Greater of the percent of

- Allocated vouchers utilized
  - $\text{Allocated vouchers} \times 12 (\text{unit months available}) / \text{actual unit months leased}$
- Annual budget authority utilized
  - $\text{Annual budget authority} / \text{HAP expended}$
- Units assisted under the voucher homeownership option or occupied under a project-based HAP contract are included in the indicator measurement.

**Lease-Up: Scoring**

- In the event a PHA has insufficient allocated budget authority to lease 98 or 95 percent of the units under Annual Contributions Contract (ACC), HUD will consider whether the PHA has used at least 98 or 95 percent of its allocated budget authority.
- Rule: “The percent of units leased, or the percent of allocated budget authority expended during the last PHA calendar year was 98 percent or more.”
- If the PHA has an offset, the offset is counted along with the ABA in the eligibility.
  - Example: ABA = \$1,000,000
  - But that is due to an \$18,000 offset
  - Amount the PHA is eligible to is \$1,018,000
  - PHA spent \$940,000
  - Percent of ABA utilized is 92.3 ( $\$940,000 / \$1,018,000$ )

**Points**

- 20 points      98 percent ACC units leased/ABA expended
- 15 points      95–97 percent ACC units leased/ABA expended
- 0 points      Less than 95 percent ACC units leased/ABA expended

**Helpful Hints**

- If a PHA’s units under ACC include units obligated for public housing relocation and replacement, but the PHA will be unable to utilize the vouchers during the CY, request that the HUD financial analyst change the ACC effective date.
- Units abated due to owner-caused HQS fail do not count toward lease-up.

**Most Common Errors**

- Failure to monitor and project HAP expenditures and voucher allocations ongoing.
- Failure to act quickly when lease-up is necessary.
  - From waiting list selection to lease-up can take an average of 4-6 months

**Administrative Policies**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a policy to select families from the waiting list based on leasing/spending projections.				
<input type="checkbox"/> The PHA policy supports quick determination of eligibility and voucher issuance (for those determined eligible).				
<input type="checkbox"/> The PHA has a policy to over issue vouchers based on anticipated leasing success rates.				
<input type="checkbox"/> PHA policy ensures quick Request for Tenancy Approval processing, including rent reasonableness determination, scheduling of move-in HQS inspection, and HAP contract execution.				
<input type="checkbox"/>				

**Procedures and Systems**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> PHA management understand and utilize HUD's Two-Year Tool (TYT) to manage and project leasing/spending.				
<input type="checkbox"/> The PHA maintains leasing and eligibility success rate data through the TYT or elsewhere and uses it in leasing/spending projections.				
<input type="checkbox"/> The PHA management and intake supervisors meet at least monthly to discuss leasing levels and leasing/spending projections.				
<input type="checkbox"/> The PHA over issues vouchers to achieve maximum leasing levels.				
<input type="checkbox"/> Briefings take place in a timely manner so as to support families receiving vouchers quickly once determined eligible.				
<input type="checkbox"/> PHA procedures ensure PHA leasing actions are completed quickly after receipt of a complete Request for Tenancy Approval, including rent reasonableness determination, HQS lease-up inspection, and HAP contract execution.				
<input type="checkbox"/> The intake staff have a marketing plan that is utilized when lease-up drops.				
<input type="checkbox"/> Owner workshops are held on a regular basis.				
<input type="checkbox"/> Program information is available to owners, the public, and families.				
<input type="checkbox"/>				

**Staff Communications**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> PHA procedures ensure waiting list selection takes place regularly, as needed based on leasing/spending projections.				
<input type="checkbox"/> PHA procedures call for eligibility and success rate tracking.				
<input type="checkbox"/> PHA procedures support quick eligibility determination, briefing scheduling, and voucher issuance.				
<input type="checkbox"/> The PHA has a process to train housing staff on the policies, procedures and processes that are required to take a family from the Request for Tenancy Approval through the leasing process.				
<input type="checkbox"/> The PHA has a process for communicating changes to the process to the appropriate staff responsible for carrying out the functions.				
<input type="checkbox"/> The finance staff and the section 8 director meet regularly to determine the number of families to pull from the waiting list to lease up available funding.				
<input type="checkbox"/> The PHA has a process that ensures consistent and appropriate communication between staff collaborating on a tenant file, including inspection status.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> Management staff meets at least monthly to review the Two-Year Tool and leasing status.				
<input type="checkbox"/> Eligibility tracking logs are reviewed at least biweekly to identify and address any eligibility process slowdowns and/or roadblocks.				
<input type="checkbox"/> Leasing tracking logs are reviewed at least biweekly to identify and address any leasing process slowdowns and/or roadblocks.				
<input type="checkbox"/>				

**INDICATOR 14. FAMILY SELF SUFFICIENCY**

- Two components:
  - 14a. FSS Enrollment
  - 14b. Percent of FSS Participants with Escrow Account Balances
- Applies only to PHAs required to administer an FSS program
- PHA checks off on the certification form if the indicator is not applicable
  - Check box under 14a. certification and under 14b. certification
- If checked, HUD field office verifies that PHA is not required to administer an FSS program

**Indicator 14a. FSS Enrollment**

- PHA certifies:
  - a. Number of mandatory slots or number of slots with HUD-approved exception
  - b. Number of FSS families currently enrolled
  - c. Portability: number of families currently enrolled who have moved under portability & whose section 8 assistance is administered by another PHA
  - d. Percent of FSS slots filled (b + c divided by a)
- The HUD field office will verify the number of mandatory FSS slots reported on the PHA's certification
- IMS/PIC supplies the number of FSS families currently enrolled.

**Indicator 14b. Percent of FSS Participants with Escrow Balance**

- The PHA has made progress in supporting family self-sufficiency as measured by the percent of currently enrolled FSS families with escrow account balances (need 30 percent for full points)

$$\frac{\text{Number of FSS families with positive escrow balance or with a positive amount of escrow disbursed}}{\text{Number of families in PIC w/progress reports}}$$

= Percent with escrow accounts balance

- Families whose latest FSS report on their 50058 is an FSS Enrollment Report are excluded from the calculation
  - Not eligible for FSS escrow
- PHA certifies:
  - Yes or no
  - If the initial PHA, enter the number of families with FSS escrow accounts currently enrolled in your FSS program, but who have moved under portability and whose Section 8 assistance is administered by another PHA

### Points

- 14a: FSS Enrollment
  - 5 points                      80 percent or more of mandatory FSS slots filled
  - 3 points                      60–79 percent of slots filled
  - 0 points                      Less than 60 percent filled
- 14b: FSS Escrow Account Balance
  - 5 points:                      30 percent or more of FSS families have escrow account balances
  - 0 points                      Less 30 percent of FSS families have escrow account balances

### Helpful Hints

- If the number of required FSS slots is incorrect in IMS/PIC, the PHA can appeal to the field office for an adjustment
- Old FSS records may have disappeared from IMS/PIC
- Historical adjustment (Action Code 14) does not correct recording a family as an FSS participant
- Advise HUD of any discrepancy with the SEMAP submission



**Administrative Policies – 14a**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a policy and corresponding procedures that ensure that FSS participants enter into a Contract of Participation in order to receive the benefits of the FSS program.				
<input type="checkbox"/> The PHA has a policy and corresponding procedures that detail the incentives the PHA intends to offer eligible families to encourage their participation in the FSS program.				
<input type="checkbox"/> The PHA has a policy and corresponding procedures that details the outreach activities it will carry out to ensure that eligible families will be notified about the FSS program.				
<input type="checkbox"/> The PHA has a policy and corresponding procedures that detail the causes for and the process of terminating participants' involvement in the FSS program and the withholding of services for families who fail to comply with the contract of participation.				
<input type="checkbox"/> The PHA has identified all of the FSS policy considerations regarding family selection, termination, and portability in its HUD-approved Action Plan.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Procedures and Systems – 14a**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has established a Program Coordinating Committee of representatives from public and private sectors, local government, the PHA, Public Housing residents, HCV participants, and others in the community.				
<input type="checkbox"/> The PHA has an action plan for accomplishing their FSS program goals and the plan identifies access to resources and community leadership needs to carry out the FSS program.				
<input type="checkbox"/> The PHA has developed systems and procedures to integrate FSS functions into its operation.				
<input type="checkbox"/> The PHA has an outreach plan and associated materials used to inform families on its FSS program and to recruit FSS program participants				
<input type="checkbox"/> The PHA has a process and written supporting documentation to ensure families understand what the program offers them, orients them to the program once selected, and measures outcomes as a result of being in the program.				
<input type="checkbox"/> The PHA has a process and corresponding procedures to select families for FSS participation in accordance with HUD-required family selection procedures, showing how they will ensure compliance with FHEO requirements.				
<input type="checkbox"/> The PHA has a process to accomplish the timetable for filling FSS slots in accordance with HUD requirements.				
<input type="checkbox"/> The PHA has a system detailing that staff are responsible for FSS functions. If FSS functions are separate from the Housing staff, there is a communications and coordination plan to ensure proper communications about issues and changes associated with the family situation that could result in a change in computation of the escrow credit.				

**Staff Communications – 14a**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA provides training to ensure that staff are technically competent to compute the FSS credit.				
<input type="checkbox"/> The PHA staff has access to information that is required for the FSS Action Plan, that includes: <ul style="list-style-type: none"> <li><input type="checkbox"/> a description of the number, size, characteristics (including racial and ethnic data) of the families expected to participate</li> <li><input type="checkbox"/> a needs assessment identifying the supportive service needs of families expected to be successful in the FSS program</li> <li><input type="checkbox"/> a description of the number of eligible FSS families who can reasonably be expected to receive supportive services under FSS</li> </ul>				
<input type="checkbox"/> There is a regularly and consistently maintained communication between the occupancy staff and the FSS staff to ensure proper calculation and management of the FSS escrow credit.				
<input type="checkbox"/> There is an internally coordinated procedures that is maintained by both the occupancy and FSS staff to ensure that disbursements out of the escrow credit fund are properly administered.				
<input type="checkbox"/> The PHA has sample family contract language for use in building individual family participation plans.				
<input type="checkbox"/>				

**Quality Assurance – 14a**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has procedures and systems in place to monitor staff activity and program outcomes with regard to the approved action plan to promote required level of program enrollment.				
<input type="checkbox"/> The PHA has a process and written supporting documentation that is used to monitor the quality of services received from collaborating community resources.				
<input type="checkbox"/> The PHA uses form HUD-52650, that the family executes with the PHA, and that spells out the goals and objectives of the program, the individual's participation in the program, and the family's responsibilities and obligations for participating in the program.				
<input type="checkbox"/> The PHA has a process and a corresponding certification that there are no duplication of services and activities associated with the development of collaborations with community resources.				
<input type="checkbox"/> The PHA periodically reviews IMS/PIC Summary Data for this indicator.				
<input type="checkbox"/> The PHA monitors monthly IMS/PIC response to ensure proper data submission for this indicator.				
<input type="checkbox"/> The PHA makes corrections within the month of receipt of IMS/PIC error reports for this indicator.				
<input type="checkbox"/> Staff training is provided to eliminate IMS/PIC errors.				
<input type="checkbox"/> If the FSS enrollment is inadequate, the supervisor determines the cause and implements corrective measures.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Administrative Policies – 14b**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA has a policy and corresponding procedures that detail the incentives the PHA intends to offer eligible families to encourage their move to employment.				
<input type="checkbox"/> The PHA selects families who will be contributing to an escrow account faster than other families.				
<input type="checkbox"/> The PHA has a policy on whether it will permit interim disbursements from the escrow account and under what circumstances.				
<input type="checkbox"/> PHA policies require regular meetings with FSS participants to discuss goal progress.				
<input type="checkbox"/>				

**Procedures and Systems – 14b**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA publicizes the escrow account in its literature.				
<input type="checkbox"/> The PHA meets regularly with participating FSS families to review goals and progress.				
<input type="checkbox"/> The PHA provides a regular accounting to the family on the escrow account.				
<input type="checkbox"/> The PHA ensures correct escrow deposit calculations.				
<input type="checkbox"/> PHA staff responsible for calculating the escrow has access to information regarding family changes and other factors that could impact the escrow credit.				
<input type="checkbox"/> The PHA has procedures and guidelines for administering interim disbursements from the escrow account.				
<input type="checkbox"/> PHA procedures ensure escrow disbursements are made in compliance with HUD requirements and PHA policy.				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Staff Communications – 14b**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The FSS and HCV staff understand how the escrow account works and can explain it to families.				
<input type="checkbox"/> The finance staff and FSS and HCV staff work together to monitor escrow accounts.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**Quality Assurance – 14b**

MEASURE	STATUS OF COMPLIANCE			
	Yes	No	Some	N/A
<input type="checkbox"/> The PHA periodically reviews IMS/PIC Summary Data for this indicator.				
<input type="checkbox"/> The PHA monitors monthly IMS/PIC response to ensure proper data submission for this indicator.				
<input type="checkbox"/> The PHA makes corrections within the month of receipt of IMS/PIC error reports for this indicator.				
<input type="checkbox"/> Staff training is provided to eliminate IMS/PIC errors.				
<input type="checkbox"/>				
<input type="checkbox"/>				

**DECONCENTRATION BONUS INDICATOR**

- Based on families with children living in or who moved to low poverty census tracts.
- Verified by SEMAP certification data and annual audit report.
- Submitting deconcentration data is mandatory for PHAs using one or more payment standard amounts that exceed 100 percent of FMR set at the 50th percentile to provide access to a broad range of housing opportunities throughout a metropolitan area
  - Starts with second PHA fiscal year after initial use of 50th percentile payment standards
- Submission is optional for all other PHAs.
- 5 points

**Helpful Hints**

- If not required to submit on this indicator, the 5 possible points are bonus points.
  - Example: A PHA not required to submit under this indicator would've scored 86 percent of possible points (standard performer). With the 5 bonus points, they would score 90 percent of possible points (high performer).
- Historical data is needed.
  - Cannot show improvement without a starting point
- Low poverty census tracts must be identified.

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 IMS/PIC for the PHA's tenant-based Section 8 families with children. If HUD determines that the quantity of IMS/PIC data is insufficient for adequate analysis, HUD will not award points under this bonus indicator.

**Data Gathering Process and Forms**

***Standard: PHA to submit statistical data, in a HUD prescribed format, as evidence of the percentage of HCV families with children in the PHA's jurisdiction who live in or have moved to low poverty census tract areas.***

**Compliance Requirement**

- PHAs using one or more payment standard amounts that exceeds 100 percent of the published FMR set at the 50th percentile rent must, and other PHAs may (for bonus points):
  - Provide data that indicate that half of the HCV families with children assisted by the PHA in its principal operating area reside in low poverty areas.
  - Provide data that indicate that during the PHA's last fiscal year the percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area 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
  - Provide data that indicates that 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.
- PHAs providing HCV rental assistance in more than one metropolitan area within a state or region must make separate determinations of each metro area where the PHA has assisted at least 20 HCV families with children in the last completed fiscal year.

**Audit Objectives**

- The PHA has documentation that substantiates that the Deconcentration Bonus compliance requirements have been met.
- The PHA's audit indicates that the information on file has been analyzed and the data supports the PHA's right to claim the Deconcentration Bonus points.

**Suggested Procedures for Audit**

- The auditor will review the PHA's analyzed data and determine that the PHA has clearly delineated areas that it considers to be high poverty or minority concentration areas.
- The auditor will request and review documentation that shows the areas in the PHA's principal operating area that are considered low poverty and non-minority concentration areas.

- The auditor will request and review documentation that prove such areas are indeed low poverty census tract areas. Such documentation may include compiled census bureau data gathered for the purpose of showing the municipality's demographics.
- The auditor will review the PHA's compiled geographic data that include all the PHA's principal operating area where its entire HCV caseload of families with children live. Such an analysis will include data indicating the percentage of assisted families with children living in both low— and high-poverty census tracts.
- The auditor will review the PHA's substantiating statistical data, including information gathered from reports on newly leased units to determine the percentage of HCV families with children that moved within the PHA's last fiscal year into low poverty census tract areas.
- The auditor will review the PHA's substantiating statistical data to determine the number of HCV mover families with children who moved to low poverty census tract areas in the PHA's principal operating area over the PHA's last two fiscal years and compare that number with the number of HCV families with children who moved into low poverty census tract areas at the end of the second to last PHA fiscal year.

**Audit File Documentation for Deconcentration Bonus**

- The PHA audit file should include maps of high and low poverty areas in the PHA's principal operating area that distinguish between the areas and show the percentage of HCV families with children in each.
- An appropriate demonstration of reports used to substantiate the PHA's compliance claim might include the following:
  - A report showing the number of HCV families with children assisted by the PHA
  - A lease-up report showing the number of HCV families with children leased up within the PHA's last fiscal year and the areas that they moved into
  - A report showing the number of HCV families with children leased up within the PHA's last two fiscal years
  - A report with map attached showing the areas of the PHA's principal operating areas where all HCV families with children are residing

## **ADDITIONAL INFORMATION**

- A PHA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the PHA in completing its certification (Comments)
- A PHA may also send paper documentation to the HUD field office

## **COMMON GENERAL SEMAP ERRORS**

- Failure to monitor year-to-date performance to identify problems and solutions before it's too late
- Having SEMAP reviews completed by someone involved in the work
- Not understanding specific indicator requirements
- Overscoring!
- Failure to:
  - Maintain clear audit trails and records on SEMAP certification reviews
  - Certify timely
  - Train staff on SEMAP and how staff's work impacts the PHA's SEMAP score

## **NEXT STEPS**

- Set SEMAP goals
  - What rating will you accept?
  - What are the consequences of being a standard performer?
  - What are the consequences for a troubled status?
- Set up your SEMAP system
  - How will you collect data?
    - Manually? Electronically?
  - Who will conduct reviews?
  - Who will report results to management?
  - Where will records be stored?
    - Paper and electronic documentation

- Conduct a preliminary SEMAP evaluation
  - Analyze results
  - What are your strengths?
  - What are your weaknesses?
- Determine the basis for prioritizing which indicators you will work on first
  - Points
  - Easiest to complete
  - Staff availability
  - Control over indicator area
  - Political consequences
- Prioritize
  - Some fixes may take a great deal of time and effort. Typically, these include:
    - Determination of adjusted income
    - HQS enforcement
    - Lease-up
  - Some fixes are typically quick and easy:
    - HQS quality control inspections
  - Some problems should be researched to see if the fix is easy
    - All indicators measured through IMS/PIC
- Create an action plan
  - Actions may include:
    - Policy clarification and / or update
    - Revisiting procedures
    - Training and coaching
    - Ongoing reviews, tracking, monitoring, training

## Notes

## CHAPTER 3      Problem Solving

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### PROBLEM SOLVING METHODOLOGY

- Analyze real and potential problems
- Evaluate possible solutions
- Act on the best solution
- Evaluate solution implemented
- Do as a formal process for complex problems

#### *Gather Data*

- *List the indicators of the problem.*
  - All the available facts related to the problem must be gathered. Some indicators may be positive and some negative. There is no evaluation at this stage.

#### *Analyze*

- *Define the problem clearly.*
  - This may be the most important step, yet it is often overlooked. If the problem that needs to be solved is not clear, the wrong problem might be solved.
- *Identify the causes of the problem.*
  - Symptoms must be distinguished from causes. If the decision to be made is emotionally laden, this may help clear away the anger, resentment, or excitement. This is generally a difficult part of the process.

### ***Develop Solutions***

- *Develop possible solutions.*
  - This is the most creative part of the process. Sometimes only two solutions are possible, but more often, several are feasible. A group may come up with ideas that one individual will not think of.
- *Evaluate alternative solutions.*
  - Pros and cons, costs and benefits, or whatever method is appropriate for the situation must be considered. Evaluation can be objective or subjective, depending on the problem. Subjective evaluations are generally reserved for personal decisions, but intuition can sway the final decision between equally good solutions.
- *Choose the best alternative.*
  - The best choice must be made among the alternatives. One consideration is that values are often part of the decision. Each person brings their own values to the table as well as awareness of the PHA's values and goals. If the problem is significant, it may be wise to revise the agency's values and mission.

### ***Implement***

- *Act.*
  - Depending on the complexity of the solution, the action phase can be simple or complicated. If it is complicated, or if the solution will require several steps, then an action plan should be developed describing what will be done, when, where, and by whom.



### ***Evaluate***

- *Evaluate the implemented solution.*
  - This may be the most important but most overlooked step. After a solution has been implemented, the outcome should be evaluated. If it was not the best alternative, an evaluation must be made whether to continue implementation or whether to go back through the process. Perhaps the problem should be redefined.

### **FACT-BASED DECISION MAKING**

- Decisions are only as good as the facts on which they are based. The benefits of fact-based decision making include the following<sup>1</sup>:
  - It focuses on problem solving, using a rational rather than an emotional basis for decision making.
  - It provides a systematic method for identifying priorities for action.
  - It helps individuals do their jobs better, faster, and with less cost.
- Taking a problem apart, analyzing it, and making decisions based on the facts that emerge from the process will guarantee a better decision.

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1. *Achieving the Competitive Edge* by Harry K. Jackson, Jr. and Normand L. Frigon

# SEMAP Self-Assessment

## Problem Solving

### SEMAP Scoring Sheet

Performance Indicator	Anticipated Rating	Points	Possible Points
1. Selection from the Waiting List			15
2. Reasonable Rent			20
3. Determination of Adjusted Income			20
4. Utility Allowance Schedule			5
5. HQS Quality Control Inspections			5
6. HQS Enforcement			10
7. Expanding Housing Opportunities			5
8. Payment Standards			5
9. Annual Reexaminations			10
10. Correct Tenant Rent Calculations			5
11. Pre-contract HQS Inspections			5
12. Annual HQS Inspections			10
13. Lease-up			20
14. FSS Enrollment and escrow accounts			10
Success Rate of Voucher holders			5
<b>Totals</b>			
Deconcentration Bonus			5

Anticipated Points	Total Possible Points	Anticipated Percent
<input type="text"/>	÷ <input type="text"/>	= <input type="text"/> %

#### Anticipated Score

- ☐ High Performer (90%+)
   
☐ Average (61-89%)
   
☐ Troubled (60% or less)

**Problem Solving Form**

**Instructions:** If there is more than one problem in a case, use a separate form for each one.

1. Record all findings that suggest a specific problem and the data source where you found each one. Positive indicators identify resources; negative indicators point to something wrong.

Data Source	Indicator of the Problem	Pos	Neg

2. Analyze the indicator(s) of the problem and state the problem that results.

Statement of the problem

3. List the possible causes of the problem.

Cause(s)

4. Decide on most likely solutions to the problem.

Solution #	Solution

---

- ### ACTION PLAN

[illegible]

Problem Solving
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[illegible]

**Problem Solving Form**

**Instructions:** If there is more than one problem in a case, use a separate form for each one.

1. Record all findings that suggest a specific problem and the data source where you found each one. Positive indicators identify resources; negative indicators point to something wrong.

Data Source	Indicator of the Problem	Pos	Neg

---

- ## Statement of the problem

3. List the possible causes of the problem.

- |          |
|----------|
| Cause(s) |
|----------|

4. Decide on most likely solutions to the problem.

- | Solution # | Solution |
|------------|----------|
|------------|----------|



- [illegible]

Problem Solving
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[illegible]

## CHAPTER 4      **References**

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### **Section 1    24 CFR References**

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## Section 1 24 CFR References

### 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.

### 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.

*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(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(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).

*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.

*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.

## **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 paragraph (h)(2) 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:

(i) The complete and accurate SSN assigned to each member of the household; and

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

(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 (h)(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.

(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, 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, 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: (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.

*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, 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<sup>1</sup>

### 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.<sup>1</sup>

*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 immigration 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.

1. The Immigration and Naturalization Service has been renamed the U.S. Citizenship and Immigration Services (USCIS), but Subpart E has not yet been updated to reflect the change.

*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 and 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 under 5.516 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 submitted.* 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 in 5.514. 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 Rental Voucher Program or for an over-FMR tenancy in the Section 8 Rental Certificate Program. For Section 8 assistance other than assistance for a tenancy under the voucher program or an over-FMR tenancy under the certificate 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 or over-FMR tenancy. For a tenancy under the voucher program or for an over-FMR tenancy under the certificate 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.* The PHA shall prorate the family's assistance by:

(1) Step 1. Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) Step 2. Subtracting the total tenant payment from a HUD-supplied 'public housing maximum rent' applicable to the unit or the PHA. (This 'maximum rent' shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible ('family maximum subsidy').

(3) Step 3. Dividing 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'.

(4) Step 4. Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ('eligible family members').

(5) Step 5. The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible ('eligible subsidy'). The family's rent is the 'public housing maximum rent' minus the amount of the eligible subsidy.

#### 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 in 5.512, 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 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.

*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 5.613.

**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, 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.<sup>2</sup>

(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 to 966.55(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 increase in annual 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.

*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 cumulative twelve 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 twelve month exclusion and phase-in.* During the second cumulative twelve month period after 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 of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four 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) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(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.

(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 reexamination.* 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.

## 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.* 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.

## 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 tenantbased 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 tenantbased 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 unique entity identifier number for the applicant.

(b)(1) Applicants or groups of applicants under a consortium arrangement must have a unique entity identifier 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 unique entity identifier 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 unique entity identifier of each applicant that would receive funds directly from HUD.

(3) If an organization is managing funds for a group of organizations, a unique entity identifier 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 unique entity identifier 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 unique entity identifier and the individual must submit the institution's unique entity identifier number with the application.

(e) Unless an exemption is granted by OMB, HUD will not consider an application as complete until a valid unique entity identifier 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 in Public and Section 8 Housing**

##### **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 other 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 35 LEAD-BASED PAINT POISONING

### PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

#### Subpart A Disclosure of Known Lead-based Paint Hazards Upon Sale or Lease of Residential Property

##### 35.80 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

##### 35.82 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

(a) Sales of target housing at foreclosure.

(b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.

(c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.

(d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under 35.88 and where no new information described in 35.88 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

##### 35.84 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

##### 35.86 Definitions.

The following definitions apply to this subpart.

*The Act* means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

*Agent* means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

*Available* means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

*Common area* means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

*Contract for the purchase and sale of residential real property* means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more

residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

*EPA* means the Environmental Protection Agency.

*Evaluation* means a risk assessment and/or inspection.

*Foreclosure* means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

*Housing for the elderly* means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

*Inspection* means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

*Lead-based paint* means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

*Lead-based paint free housing* means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

*Lead-based paint hazard* means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

*Lessee* means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

*Lessor* means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

*Owner* means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

*Purchaser* means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

*Reduction* means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

*Residential dwelling* means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

*Risk assessment* means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

*Seller* means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term 'seller' also includes:

(1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and

(2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

*Target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

*TSCA* means the Toxic Substances Control Act, 15 U.S.C. 2601.

*0-bedroom dwelling* means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

### 35.88 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to 35.82. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA -747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records and reports regarding common areas. This requirement also includes records and reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

### 35.90 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

### **35.92 Certification and acknowledgment of disclosure.**

(a) Seller requirements. Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under section 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by 35.90(a); or

(ii) Waived the opportunity.

(6) When any agent is involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(b) Lessor requirements. Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the

determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When any agent is involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(c) Retention of certification and acknowledgment information.

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

### **35.94 Agent responsibilities.**

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under §35.88, 35.90, and 35.92.

(2) Ensure that the seller or lessor has performed all activities required under §35.88, 35.90, and 35.92, or personally ensure compliance with the requirements of §35.88, 35.90, and 35.92.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

### **35.96 Enforcement.**

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with §35.88 (disclosure requirements for sellers and lessors), 35.90 (opportunity to conduct an evaluation), 35.92 (certification and acknowledgment of disclosure), or 35.94 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than \$10,000.

### 35.98 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint and/or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

## Subpart B General Lead-based Paint Requirements and Definitions for all Programs

### 35.100 Purpose and applicability.

(a) Purpose. The requirements of subparts B through R of this part are promulgated to implement the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.).

(b) Applicability.

(1) *This subpart.* This subpart applies to all target housing that is federally owned and target housing receiving Federal assistance to which subparts C, D, F through M, and R of this part apply, except where indicated.

(2) *Other subparts.*

(i) *General.* Subparts C, D, and F through M of this part each set forth requirements for a specific type of Federal housing activity or assistance, such as multifamily mortgage insurance, project-based rental assistance, rehabilitation, or tenant-based rental assistance. Subpart R of this part provides standards and methods for activities required in subparts B, C, D, and F through M of this part.

(ii) *Application to programs.* Most HUD housing programs are covered by only one subpart of this part, but some programs can be used for more than one type of assistance and therefore are covered by more than one subpart of this part. A current list of programs covered by each subpart of this part is available on the internet at [www.hud.gov](http://www.hud.gov), or by mail from the National Lead Information Center at 1-800-424-LEAD.

### 35.106 Information collection requirements.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 2501-3520), and have been assigned OMB control number 2539-0009. 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.

### 35.110 Definitions.

*Abatement* means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of 'permanent'). Abatement includes:

(1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and

(2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

*Act* means the Lead-Based Paint Poisoning Prevention Act, as amended, 42 U.S.C. 4822 et seq.

*Bare soil* means soil or sand not covered by grass, sod, other live ground covers, wood chips, gravel, artificial turf, or similar covering.

*Certified* means certified to perform such activities as risk assessment, lead-based paint inspection, abatement supervision, or renovation, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA), in accordance with 40 CFR part 745, subpart Q, or by the EPA, in accordance with 40 CFR part 745, subparts E or L.

*Chewable surface* means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an 'accessible surface' as defined in 42 U.S.C. 4851b(2)). Hard metal substrates and other materials that cannot be dentured by the bite of a young child are not considered chewable.

*Clearance examination* means an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this part, exist in the dwelling unit or work site. The clearance process includes a visual assessment and collection and analysis of environmental samples. Dust-lead standards for clearance are found at 35.1320.

*Common area* means a portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, garages and boundary fences.

*Component* means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

*Composite sample* means a collection of more than one sample of the same medium (e.g., dust, soil or paint) from the same type of surface (e.g., floor, interior window sill, or window trough), such that multiple samples can be analyzed as a single sample.

*Containment* means the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

*Designated party* means a Federal agency, grantee, subrecipient, participating jurisdiction, housing agency, Indian Tribe, tribally designated housing entity (TDHE), sponsor, or property owner responsible for complying with applicable requirements.

*Deteriorated paint* means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

*Dry sanding* means sanding without moisture and includes both hand and machine sanding.

*Dust-lead hazard* means surface dust that contains a dust-lead loading (area concentration of lead) equal to or exceeding the levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for dust-lead hazards in 35.1320.

*Dwelling unit* means a:

(1) Single-family dwelling, including attached structures such as porches and stoops; or

(2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

*Elevated blood lead level* means a confirmed concentration of lead in whole blood of a child under age 6 equal to or greater than the concentration in the most recent guidance published by the U.S. Department of Health and Human Services (HHS) on recommending that an environmental intervention be conducted. (When HHS changes the value, HUD will publish a notice in the Federal Register, with the opportunity for public comment, on its intent to apply the changed value to this part, and, after considering comments, publish a notice on its applying the changed value to this part.)

*Encapsulation* means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of 'permanent').

## HCV HUD References

*Enclosure* means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent (see definition of 'permanent').

*Environmental investigation* means the process of determining the source of lead exposure for a child under age 6 with an elevated blood lead level, consisting of administration of a questionnaire, comprehensive environmental sampling, case management, and other measures, in accordance with chapter 16 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ("Guidelines").

*Evaluation* means a risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint or an environmental investigation.

*Expected to reside* means there is actual knowledge that a child will reside in a dwelling unit reserved or designated exclusively for the elderly or reserved or designated exclusively for persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit.

*Federal agency* means the United States or any executive department, independent establishment, administrative agency and instrumentality of the United States, including a corporation in which all or a substantial amount of the stock is beneficially owned by the United States or by any of these entities. The term 'Federal agency' includes, but is not limited to, Rural Housing Service (formerly Rural Housing and Community Development Service that was formerly Farmer's Home Administration), Resolution Trust Corporation, General Services Administration, Department of Defense, Department of Veterans Affairs, Department of the Interior, and Department of Transportation.

*Federally owned property* means residential property owned or managed by a Federal agency, or for which a Federal agency is a trustee or conservator.

*Firm commitment* means a valid commitment issued by HUD or the Federal Housing Commissioner setting forth the terms and conditions upon which a mortgage will be insured or guaranteed.

*Friction surface* means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

*g* means gram, *mg* means milligram (thousandth of a gram), and *Mug* means microgram (millionth of a gram).

*Grantee* means any state or local government, Indian Tribe, IHBG recipient, insular area or nonprofit organization that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K of this part, except the HOME program.

*Hard costs of rehabilitation* means:

- (1) Costs to correct substandard conditions or to meet applicable local rehabilitation standards;
- (2) Costs to make essential improvements, including energy-related repairs, and those necessary to permit use by persons with disabilities; and costs to repair or replace major housing systems in danger of failure; and
- (3) Costs of non-essential improvements, including additions and alterations to an existing structure; but
- (4) Hard costs do not include administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.).

*Hazard reduction* means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

*HEPA vacuum* means a vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

*Housing for the elderly* means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more, or other age if recognized as elderly by a specific Federal housing assistance program.

*Housing receiving Federal assistance* means housing which is covered by an application for HUD mortgage insurance, receives housing assistance payments under a program administered by HUD, or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program administered by an agency other than HUD.

*HUD* means the United States Department of Housing and Urban Development.

*HUD-owned property* means residential property owned or managed by HUD, or for which HUD is a trustee or conservator.

*Impact surface* means an interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

*Indian Housing Block Grant (IHBG) recipient* means a tribe or a tribally designated housing entity (TDHE) receiving IHBG funds.

*Indian tribe* means a tribe as defined in the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.).

*Inspection* (See Lead-based paint inspection).

*Insular areas* means Guam, the Northern Mariana Islands, the United States Virgin Islands and American Samoa.

*Interim controls* means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

*Interior window sill* means the portion of the horizontal window ledge that protrudes into the interior of the room, adjacent to the window sash when the window is closed. The interior window sill is sometimes referred to as the window stool.

*Lead-based paint* means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

*Lead-based paint hazard* means any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

*Lead-based paint inspection* means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

*Lead hazard screen* means a limited risk assessment activity that involves paint testing and dust sampling and analysis as described in 40 CFR 745.227(c) and soil sampling and analysis as described in 40 CFR 745.227(d).

*Mortgagee* means a lender of a mortgage loan.

*Mortgagor* means a borrower of a mortgage loan.

*Multifamily property* means a residential property containing five or more dwelling units.

*Occupant* means a person who inhabits a dwelling unit.

*Owner* means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

*Paint stabilization* means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.



*Paint testing* means the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

*Paint removal* means a method of abatement that permanently eliminates lead-based paint from surfaces.

*Painted surface to be disturbed* means a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

*Participating jurisdiction* means any State or local government that has been designated by HUD to administer a HOME program grant.

*Permanent* means an expected design life of at least 20 years.

*Play area* means an area of frequent soil contact by children of less than 6 years of age, as indicated by the presence of play equipment (e.g. sandboxes, swing sets, sliding boards, etc.) or toys or other children's possessions, observations of play patterns, or information provided by parents, residents or property owners.

*Project-based rental assistance* means Federal rental assistance that is tied to a residential property with a specific location and remains with that particular location throughout the term of the assistance.

*Public health department* means a State, tribal, county or municipal public health department or the Indian Health Service.

*Public housing development* means a residential property assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), but not including housing assisted under section 8 of the 1937 Act.

*Reevaluation* means a visual assessment of painted surfaces and limited dust and soil sampling conducted periodically following lead-based paint hazard reduction where lead-based paint is still present.

*Rehabilitation* means the improvement of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

*Replacement* means a strategy of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

*Residential property* means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

*Risk assessment* means:

- (1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and
- (2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

*Single family property* means a residential property containing one through four dwelling units.

*Single room occupancy (SRO) housing* means housing consisting of zero-bedroom dwelling units that may contain food preparation or sanitary facilities or both (see Zero-bedroom dwelling).

*Soil-lead hazard* means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for soil-lead hazards in 35.1320.

*Sponsor* means mortgagor (borrower).

*Subrecipient* means any nonprofit organization selected by the grantee or participating jurisdiction to administer all or a portion of the Federal rehabilitation assistance or other non-rehabilitation assistance, or any such organization selected by a subrecipient of the grantee or participating jurisdiction. An owner or developer receiving Federal rehabilitation assistance or other assistance for a residential property is not considered a subrecipient for the purposes of carrying out that project.

*Standard treatments* means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

*Substrate* means the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

*Target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, HUD may designate an earlier date.

*Tenant* means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

A visual assessment alone is not considered an evaluation for the purposes of this part. *Visual assessment* means looking for, as applicable:

- (1) Deteriorated paint;
- (2) Visible surface dust, debris, and residue as part of a risk assessment or clearance examination; or
- (3) The completion or failure of a hazard reduction measure.

*Wet sanding or wet scraping* means a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

*Window trough* means the area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

*Worksite* means an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

*Zero-bedroom dwelling* means any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings (see Single room occupancy (SRO)).

### 35.115 Exemptions.

(a) Subparts B through R of this part do not apply to the following:

(1) A residential property for which construction was completed on or after January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see 35.160).

(2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.

(3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit (see definitions of 'housing for the elderly' and 'expected to reside' in 35.110).

(4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with 35.1320(a) (for more information regarding inspection procedures consult the 1997 edition of Chapter 7 of the HUD Guidelines). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.

(5) Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with §35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.

(6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.

(7) A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and nonresidential uses in a mixed-use property shall not be exempt.

(8) Any rehabilitation that does not disturb a painted surface.

(9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.

(10) If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, §35.210 and 35.215 shall not apply to the property.

(11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.

(12) Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.

(13) Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with 35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with 35.1355.

### 35.120 Options.

(a) Standard treatments. Where interim controls are required by this part, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Standard treatments shall then be conducted in accordance with 35.1335 on all applicable surfaces, including soil. Standard treatments are completed only when clearance is achieved in accordance with 35.1340.

(b) Abatement. Where abatement is required by this part, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Abatement shall then be conducted on all applicable surfaces, including soil, in accordance with 35.1325, and completed when clearance is achieved in accordance with 35.1340. This option is not available in public housing, where inspection is required.

(c) Lead hazard screen. Where a risk assessment is required, the designated party may choose first to conduct a lead hazard screen in accordance with 35.1320(b). If the results of the lead hazard screen indicate the need for a full risk assessment (e.g., if the environmental measurements exceed levels established for lead hazard screens in 35.1320(b)(2)), a complete risk assessment shall be conducted. Environmental samples collected for the lead hazard screen may be used in the risk assessment. If the results of the lead hazard screen do not indicate the need for a follow-up risk assessment, a risk assessment is not required.

(d) Paint testing. Where paint stabilization or interim controls of deteriorated paint surfaces are required by this rule, the designated party has the option to conduct paint testing of all surfaces with non-intact paint. If paint testing indicates the absence of lead-based paint on a specific surface, paint stabilization or interim controls are not required on that surface.

### 35.125 Notice of evaluation and hazard reduction activities.

The following activities shall be conducted if notice is required by subparts D and F through M of this part.

(a) Notice of evaluation or presumption. When evaluation is undertaken and lead-based paint or lead-based paint hazards are found to be present, or if a presumption is made that lead-based paint or lead-based paint hazards are present in accordance with the options described in 35.120, the designated party shall provide a notice to occupants within 15 calendar days of the date when the designated party receives the report or makes the presumption. A visual assessment alone is not considered an evaluation for the purposes of this part. If only a visual assessment alone is required by this part, and no evaluation is performed, a notice of evaluation or presumption is not required.

(1) The notice of the evaluation shall include:

(i) A summary of the nature, dates, scope, and results of the evaluation;

(ii) A contact name, address and telephone number for more information, and to obtain access to the actual evaluation report; and

(iii) The date of the notice.

(2) The notice of presumption shall include:

(i) The nature and scope of the presumption;

(ii) A contact name, address and telephone number for more information; and

(iii) The date of the notice.

(b) Notice of hazard reduction activity. When hazard reduction activities are undertaken, each designated party shall:

(1) Provide a notice to occupants not more than 15 calendar days after the hazard reduction activities (including paint stabilization) have been completed. Notice of hazard reduction shall include, but not be limited to:

(i) A summary of the nature, dates, scope, and results (including clearance) of the hazard reduction activities;

(ii) A contact name, address, and telephone number for more information;

(iii) Available information on the location of any remaining lead-based paint in the rooms, spaces, or areas where hazard reduction activities were conducted, on a surface-by-surface basis; and

(iv) The date of the notice.

(2) Update the notice, based on reevaluation of the residential property and as any additional hazard reduction work is conducted.

(3) Provision of a notice of hazard reduction is not required if a clearance examination is not required.

(c) Availability of notices of evaluation, presumption, and hazard reduction activities.

(1) The notices of evaluation, presumption, and hazard reduction shall be of a size and type that is easily read by occupants.

(2) To the extent practicable, each notice shall be made available, upon request, in a format accessible to persons with disabilities (e.g., Braille, large type, computer disk, audio tape).

(3) Each notice shall be provided in the occupants' primary language or in the language of the occupants' contract or lease.

(4) The designated party shall provide each notice to the occupants by:

(i) Posting and maintaining it in centrally located common areas and distributing it to any dwelling unit if necessary because the head of household is a person with a known disability; or

(ii) Distributing it to each occupied dwelling unit affected by the evaluation, presumption, or hazard reduction activity or serviced by common areas in which an evaluation, presumption or hazard reduction has taken place.

(iii) However, for the protection of the privacy of the child and the child's family or guardians, no notice of environmental investigation shall be posted to any centrally located common area.

### 35.130 Lead hazard information pamphlet.

If provision of a lead hazard information pamphlet is required in subparts D and F through M of this part, the designated party shall provide to each occupied dwelling unit to which subparts D and F through M of this part apply, the lead hazard information pamphlet developed by EPA, HUD and the Consumer Product Safety Commission pursuant to section 406 of the Toxic Substances Control Act (15 U.S.C. 2686), or an EPA-approved alternative; except that the

designated party need not provide a lead hazard information pamphlet if the designated party can demonstrate that the pamphlet has already been provided in accordance with the lead-based paint notification and disclosure requirements at 35.88(a)(1), or 40 CFR 745.107(a)(1) or in accordance with the requirements for hazard education before renovation at 40 CFR part 745, subpart E.

### 35.135 Use of paint containing lead.

(a) New use prohibition. The use of paint containing more than 0.06 percent dry weight of lead on any interior or exterior surface in federally owned housing or housing receiving Federal assistance is prohibited. As appropriate, each Federal agency shall include the prohibition in contracts, grants, cooperative agreements, insurance agreements, guaranty agreements, trust agreements, or other similar documents.

(b) Pre-1978 prohibition. In the case of a jurisdiction which banned the sale or residential use of lead-containing paint before 1978, HUD may designate an earlier date for certain provisions of subparts D and F through M of this part.

### 35.140 Prohibited methods of paint removal.

The following methods shall not be used to remove paint that is, or may be, lead-based paint:

- (a) Open flame burning or torching.
- (b) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (c) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (d) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (e) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. (0.30 m.) of electrical outlets, or when treating defective paint spots totaling no more than 2 sq. ft. (0.2 sq. m.) in any one interior room or space, or totaling no more than 20 sq. ft. (2.0 sq. m.) on exterior surfaces.

(f) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

### 35.145 Compliance with Federal laws and authorities.

All lead-based paint activities, including waste disposal, performed under this part shall be performed in accordance with applicable Federal laws and authorities. For example, such activities are subject to the applicable environmental review requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Toxic Substances Control Act, Title IV (15 U.S.C. 2860 et seq.), and other environmental laws and authorities (see, e.g., laws and authorities listed in 50.4 of this title).

### 35.150 Compliance with other State, tribal, and local laws.

(a) HUD responsibility. If HUD determines that a State, tribal or local law, ordinance, code or regulation provides for evaluation or hazard reduction in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of subparts B, C, D, F through M and R of this part and that adherence to the requirements of subparts B, C, D, F through M, and R of this part, would be duplicative or otherwise cause inefficiencies, HUD may modify or waive some or all of the requirements of the subparts in a manner that will promote efficiency while ensuring a comparable level of protection.

(b) Participant responsibility. Nothing in this part is intended to relieve any participant in a program covered by this subpart of any responsibility for compliance with State, tribal or local laws, ordinances, codes or regulations governing evaluation and hazard reduction. If a State, tribal or local law, ordinance, code or regulation defines lead-based paint differently than the Federal definition, the more protective definition (i.e., the lower level) shall be followed in that State, tribal or local jurisdiction.

### 35.155 Minimum requirements.

(a) Nothing in subparts B, C, D, F through M, and R of this part is intended to preclude a designated party or owner from conducting additional evaluation or hazard reduction measures beyond the minimum requirements established for each program in this regulation. For example, if the applicable subpart requires visual assessment, the designated party may choose to perform a risk assessment in accordance with 35.1320. Similarly, if the applicable subpart requires interim controls, a designated party or owner may choose to implement abatement in accordance with 35.1325.

(b) To the extent that assistance from any of the programs covered by subparts B, C, D, and F through M of this part is used in conjunction with other HUD program assistance, the most protective requirements prevail.

### 35.160 Waivers.

In accordance with 5.110 of this title, on a case-by-case basis and upon determination of good cause, HUD may, subject to statutory limitations, waive any provision of subparts B, C, D, F through M, and R of this part.

### 35.165 Prior evaluation or hazard reduction.

If an evaluation or hazard reduction was conducted at a residential property or dwelling unit before the property or dwelling unit became subject to the requirements of subparts B, C, D, F through M, and R of this part, such an evaluation, hazard reduction or abatement meets the requirements of subparts B, C, D, F through M, and R of this part and need not be repeated under the following conditions:

- (a) Lead-based paint inspection.
  - (1) A lead-based paint inspection conducted before March 1, 2000, meets the requirements of this part if:
    - (i) At the time of the inspection the lead-based paint inspector was approved by a State or Indian tribe to perform lead-based paint inspections. It is not necessary that the State or tribal approval program had EPA authorization at the time of the inspection.
    - (ii) Notwithstanding paragraph (a)(1)(i) of this section, the inspection was conducted and accepted as valid by a housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program.
  - (2) A lead-based paint inspection conducted on or after March 1, 2000, must have been conducted by a certified lead-based paint inspector.

- (b) Risk assessment.
  - (1) A risk assessment must be no more than 12 months old to be considered current.
  - (2) A risk assessment conducted before March 1, 2000, meets the requirements of this part if, at the time of the risk assessment, the risk assessor was approved by a state or Indian Tribe to perform risk assessments. It is not necessary that the state or tribal approval program had EPA authorization at the time of the risk assessment.
  - (3) A risk assessment conducted on or after March 1, 2000, must have been conducted by a certified risk assessor.
  - (4) Paragraph (b) of this section does not apply in a case where a risk assessment is required in response to the identification of a child with an elevated blood lead level. In such a case, the requirements in the applicable subpart for responding to a child with an elevated blood lead level shall apply.

(c) Interim controls. If a residential property is under a program of interim controls and ongoing lead-based paint maintenance and reevaluation activities established pursuant to a risk assessment conducted in accordance with paragraph (b) of this section, the interim controls that have been conducted meet the requirements of this part if clearance was achieved after such controls were implemented. In such a case, the program of interim controls and ongoing activities shall be continued in accordance with the requirements of this part.

(d) Abatement.

(1) An abatement conducted before March 1, 2000, meets the requirements of this part if:

(i) At the time of the abatement the abatement supervisor was approved by a State or Indian tribe to perform lead-based paint abatement. It is not necessary that the State or tribal approval program had EPA authorization at the time of the abatement.

(ii) Notwithstanding paragraph (d)(1)(i) of this section, it was conducted and accepted by a housing agency in fulfillment of the lead-based paint abatement requirement of the public housing program or by an Indian housing authority (as formerly defined under the U.S. Housing Act of 1937) in fulfillment of the lead-based paint requirement of the Indian housing program formerly funded under the U.S. Housing Act of 1937.

(2) An abatement conducted on or after March 1, 2000, must have been conducted under the supervision of a certified lead-based paint abatement supervisor.

### **35.170 Noncompliance with the requirements of subparts B through R of this part.**

(a) Monitoring and enforcement. A designated party who fails to comply with any requirement of subparts B, C, D, F through M, and R of this part shall be subject to the sanctions available under the relevant Federal housing assistance or ownership program and may be subject to other penalties authorized by law.

(b) A property owner who informs a potential purchaser or occupant of lead-based paint or possible lead-based paint hazards in a residential property or dwelling unit, in accordance with subpart A of this part, is not relieved of the requirements to evaluate and reduce lead-based paint hazards in accordance with subparts B through R of this part as applicable.

### **35.175 Records.**

The designated party, as specified in subparts C, D, and F through M of this part, shall keep a copy of each notice, evaluation, and clearance or abatement report required by subparts C, D, and F through M of this part for at least three years. Those records applicable to a portion of a residential property for which ongoing lead-based paint maintenance and/or reevaluation activities are required shall be kept and made available for the Department's review, until at least three years after such activities are no longer required.

### **Subpart M Tenant-based Rental Assistance**

#### **35.1200 Purpose and applicability.**

(a) Purpose. The purpose of this subpart M is to establish procedures to eliminate as far as practicable lead-based paint hazards in housing occupied by families receiving tenant-based rental assistance. Such assistance includes tenant-based rental assistance under the Section 8 certificate program, the Section 8 voucher program, the HOME program, the Shelter Plus Care program, the Housing Opportunities for Persons With AIDS (HOPWA) program, and the Indian Housing Block Grant program. Tenant-based rental assistance means rental assistance that is not attached to the structure.

(b) Applicability.

(1) This subpart applies only to dwelling units occupied or to be occupied by families or households that have one or more children of less than 6 years of age, common areas servicing such dwelling units, and exterior painted surfaces associated with such dwelling units or common areas. Common areas servicing a dwelling unit include those areas through which residents pass to gain access to the unit and other areas frequented by resident children of less than 6 years of age, including on-site play areas and child care facilities.

(2) For the purposes of the Section 8 tenant-based certificate program and the Section 8 voucher program:

(i) The requirements of this subpart are applicable where an initial or periodic inspection occurs on or after September 15, 2000; and  
(ii) The PHA shall be the designated party.

(3) For the purposes of formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et seq.):

(i) The requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000; and

(ii) The grantee shall be the designated party.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Shelter Plus Care program (42 U.S.C. 11402-11407) tenant-based rental assistance component:

(i) The requirements of this subpart shall apply to grants awarded pursuant to Notices of Funding Availability published on or after September 15, 2000; and

(ii) The grantee shall be the designated party.

(5) For the purposes of the HOME program:

(i) The requirements of this subpart shall not apply to funds which are committed in accordance with 92.2 of this title before September 15, 2000; and

(ii) The participating jurisdiction shall be the designated party.

(6) For the purposes of the Indian Housing Block Grant program:

(i) The requirements of this subpart shall apply to activities for which funds are first obligated on or after September 15, 2000; and

(ii) The IHBG recipient shall be the designated party.

(7) The housing agency, grantee, participating jurisdiction, or IHBG recipient may assign to a subrecipient or other entity the responsibilities of the designated party in this subpart.

### **35.1205 Definitions and other general requirements.**

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

### **35.1210 Notices and pamphlet.**

(a) Notice. In cases where evaluation or paint stabilization is undertaken, the owner shall provide a notice to residents in accordance with 35.125. A visual assessment alone is not considered an evaluation for purposes of this part.

(b) Lead hazard information pamphlet. The owner shall provide the lead hazard information pamphlet in accordance with 35.130.

### **35.1215 Activities at initial and periodic inspection.**

(a)(1) During the initial and periodic inspections, an inspector acting on behalf of the designated party and trained in visual assessment for deteriorated paint surfaces in accordance with procedures established by HUD shall conduct a visual assessment of all painted surfaces in order to identify any deteriorated paint.

(2) For tenant-based rental assistance provided under the HOME program, visual assessment shall be conducted as part of the initial and periodic inspections required under 92.209(i) of this title.

(b) The owner shall stabilize each deteriorated paint surface in accordance with §35.1330(a) and (b) before commencement of assisted occupancy. If assisted occupancy has commenced prior to a periodic inspection, such paint stabilization must be completed within 30 days of notification of the owner of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with 35.1340. If the owner does not complete the hazard reduction required by this section, the dwelling unit is in violation of Housing Quality Standards (HQS) until the hazard reduction is completed or the unit is no longer covered by this subpart because the unit is no longer under a housing assistance payment (HAP) contract with the housing agency. For the unit subsequently to come under a HAP contract with the housing agency for occupancy by a family with a child under age 6, paint stabilization must be completed, including clearance being achieved in accordance with § 35.1340.

(c) The owner shall provide a notice to occupants in accordance with 35.125(b)(1) and (c) describing the results of the clearance examination.

(d) The designated party may grant the owner an extension of time to complete paint stabilization and clearance for reasonable cause, but such an extension shall not extend beyond 90 days after the date of notification to the owner of the results of the visual assessment.

### **35.1220 Ongoing lead-based paint maintenance activities.**

Notwithstanding the designation of the PHA, grantee, participating jurisdiction, or Indian Housing Block Grant (IHBG) recipient as the designated party for this subpart, the owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with 35.1355(a).

### 35.1225 Child with an elevated blood lead level.

(a) Within 15 calendar days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a dwelling unit to which this subpart applies has been identified as having an elevated blood lead level, the designated party shall complete an environmental investigation of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. When the environmental investigation is complete, the designated party shall immediately provide the report of the environmental investigation to the owner of the dwelling unit. If the child identified as having an elevated blood lead level is no longer living in the unit when the designated party receives notification from the public health department or other medical health care provider, but another household receiving tenant-based rental assistance is living in the unit or is planning to live there, the requirements of this section apply just as they do if the child still lives in the unit. If a public health department has already conducted an evaluation of the dwelling unit in regard to the child's elevated blood lead level case, or the designated party conducted an environmental investigation of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the designated party received the notification of the elevated blood lead level, the requirements of this paragraph shall not apply. If the designated party or the owner conducted a risk assessment of the unit and common areas servicing the unit during that period, the designated party need not conduct another risk assessment there but shall conduct the elements of an environmental investigation not already conducted during the risk assessment.

(b) Verification. After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a dwelling unit covered by this subpart may have an elevated blood lead level, the designated party shall immediately verify the information with the public health department or other medical health care provider. If the public health department or provider denies the request, such as because it does not have the capacity to verify that information, the designated party shall send documentation of the denial to the HUD rental assistance program manager, who shall make an effort to verify the information. If that department or provider verifies that the child has an elevated blood lead level, such verification shall constitute notification, and the designated party shall take the action required in paragraphs (a) and (c) of this section.

(c) Lead-based paint hazard reduction. Within 30 calendar days after receiving the report of the environmental investigation from the designated party or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the environmental investigation have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the designated party or the owner, between the date the child's blood was last sampled and the date the designated party received the notification of the elevated blood lead level, already conducted an environmental investigation of the unit and common areas servicing the unit and the owner completed reduction of identified lead-based paint hazards. If the owner does not complete the lead-based paint hazard reduction required by this section, the dwelling unit is in violation of the standards of 24 CFR 982.401.

(d) Notice of lead-based paint hazard evaluation and reduction. The owner shall notify building residents of any lead-based paint hazard evaluation or reduction activities in accordance with § 35.125.

(e) Reporting requirement. (1) The owner shall report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

(2) The owner shall also report each confirmed case of a child with an elevated blood lead level to the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes within 5 business days of being so notified.

(3) The owner shall provide to the HUD field office documentation that it has conducted the activities of paragraphs (a) through (d) of this section, within 10 business days of the deadline for each activity.

(f) Other assisted dwelling units in the property. (1) If the environmental investigation conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards, the designated party or the owner shall, for other assisted dwelling units covered by this part in which a child under age 6 resides or is expected to reside on the date lead-based paint hazard reduction under paragraph (c) of this section is complete, and the common areas servicing those units, conduct a risk assessment in accordance with § 35.1320(b) within 30 calendar days after receipt of the environmental investigation report if there are 20 or fewer such units, or 60 calendar days if there are more such units.

(2) If the risk assessment conducted under paragraph (f)(1) of this section identifies lead-based paint hazards, the owner shall complete the reduction of the lead-based paint hazards in accordance with § 35.1325 or § 35.1330 within 30 calendar days, or within 90 calendar days if more than 20 units have lead-based paint hazards such that the control work would disturb painted surfaces that total more than the de minimis threshold of § 35.1350(d). Lead-based paint hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement.

(3) The requirements of this paragraph (f) of this section do not apply if:

(i) The designated party or the owner, between the date the child's blood was last sampled and the date the owner received the notification of the elevated blood lead level, both conducted a risk assessment of the other assisted dwelling units covered by paragraph (f)(1) of this section and the common areas servicing those units, and the owner conducted interim controls of identified lead-based paint hazards in accordance with § 35.1225(c); or

(ii) The owner has documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management requirements under this part throughout the 12 months preceding the date the owner received the environmental investigation report pursuant to paragraph (a) of this section; and,

(iii) In either case, the owner provided the HUD field office, within 10 business days after receiving the notification of the elevated blood lead level, documentation that it has conducted the activities described in this paragraph (f)(3).

(g) Data collection and record keeping responsibilities. At least quarterly, the designated party shall attempt to obtain from the public health department(s) with area(s) of jurisdiction similar to that of the designated party the names and/or addresses of children of less than 6 years of age with an identified elevated blood lead level. At least quarterly, the designated party shall also report an updated list of the addresses of units receiving assistance under a tenant-based rental assistance program to the same public health department(s), except that the report(s) to the public health department(s) is not required if the health department states that it does not wish to receive such report. If it obtains names and addresses of elevated blood lead level children from the public health department(s), the designated party shall match information on cases of elevated blood lead levels with the names and addresses of families receiving tenant-based rental assistance, unless the public health department performs such a matching procedure. If a match occurs, the designated party shall carry out the requirements of this section.

## PART 100 DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

### 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.

(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 other 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.

### 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.

### 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 with incomes below 30 percent of area median (extremely low-income families);

(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.



## HCV HUD References

(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. 2000d—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), title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and other applicable Federal civil right laws, and that it will affirmatively further fair housing, consistent with §§ 5.150 and 5.151 of this title.

(2) The certification is applicable to both the 5-Year Plan and the Annual Plan, including any plan incorporated therein.

(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; (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 5.151.

(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) PHAs must maintain records reflecting a certification that the PHA will affirmatively further fair housing, consistent with §§ 5.150 and 5.151 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-50058 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).

## HCV HUD References

*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 in 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, 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 pre-empt 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, or stalking.* The PHA must apply 24 CFR part 5, subpart L, in all applicable cases where there is involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

### 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 voucher payment standards;
- (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 982.354(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; and
- (22) PHA screening of applicants for family behavior or suitability for tenancy.

## **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: In 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, or stalking, 24 CFR part 5, subpart L, 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, 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. The PHA should consider whether to adopt a local 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. 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) If the family is currently living in a high poverty census tract in the PHA's jurisdiction, the briefing must also explain the advantages of moving to an area that does not have a high concentration of poor 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, or stalking, 24 CFR part 5, subpart L, 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.* The 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, or stalking.* The owner's termination of tenancy actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L.

#### **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, or stalking as provided in 24 CFR part 5, subpart L, 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, or stalking.
- (4) Whether any of the family members are receiving protection as victims of domestic violence, dating violence, 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.

(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 that 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, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit, and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the 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 nor 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.

(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, 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. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, already moved out of a unit in violation of the lease, if such move occurred to protect the health or safety of a family member 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 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; and

(ii) Prohibit more than one move by the family during any one-year period.

(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, 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.

(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) If 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.

#### 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 annually 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 or owner for initial inspection or reinspection of the unit.

(f) The PHA must adopt procedural guidelines and performance standards for conducting required HQS inspections. The PHA guidelines and standards must conform with practices utilized in the private housing market, and facilitate efficient administration of assistance under the program. The PHA administrative plan shall state the PHA guidelines and standards for conducting HQS inspections.

#### **982.406 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, 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").

(ii) The PHA may establish a separate payment standard amount within the basic range for a designated part of an FMR area.

(2) 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.* (i) 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 either the median rent method or the 40th or 50th percentile rent method as described in paragraph (c)(2)(i)(B) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(A) *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.

(B) *40th or 50th percentile rent method.* In this method, HUD determines that the area exception payment standard amount equals either the 40th or 50th percentile of rents for standard quality rental housing in the exception area. HUD determines whether the 40th or 50th percentile rent applies in accordance with the methodology described in §888.113 of this title for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(ii) The HUD Field Office may approve an exception payment standard amount within the upper range if required as a reasonable accommodation for a family that includes a person with disabilities.

(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.

(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(c), 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(c). 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 lower payment standard amount generally must be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. The PHA must determine the payment standard for the family as follows.

(i) *Step 1:* At the first regular reexamination following the decrease in the payment standard amount, the PHA shall determine the payment standard for the family in accordance with paragraphs (c)(1) and (c)(2) of this section (using the decreased payment standard amount).

(ii) *Step 2* (first reexamination payment standard amount): The PHA shall compare the payment standard amount from step 1 to the payment standard amount last used to calculate the monthly housing

assistance payment for the family. The payment standard amount used by the PHA to calculate the monthly housing assistance payment at the first regular reexamination following the decrease in the payment standard amount is the higher of these two payment standard amounts. The PHA shall advise the family that the application of the lower payment standard amount will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard amount.

(iii) *Step 3* (second reexamination payment standard amount): At the second regular reexamination following the decrease in the payment standard amount, the lower payment standard amount shall be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard amount, in which case the payment standard amount is determined in accordance with paragraph (c)(4) of this section.

(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 higher payment standard for the family, as a reasonable accommodation for such person, in accordance with part 8 of this title, the PHA may establish a higher payment standard for the family within the basic range.

#### **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.

#### **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: Regular 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) 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.  
(b) *When PHA conducts interim reexamination.* (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.

(c) *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.

(d) *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.

(e) *Family member income.* Family income must include income of all family members, including family members not related by blood or marriage. If any new family member is added, family income must include any income of the additional family member. The PHA must conduct a reexamination to determine such additional income, and must make appropriate adjustments in the housing assistance payment.

(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.* (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).

(2) At reexamination, the PHA must use the PHA current utility allowance schedule.

(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)(1), an incident or incidents of actual or threatened domestic violence, dating violence, 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, 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(c)(2), criminal activity directly related to domestic violence, dating violence, 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 immediate family member of the tenant 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, or stalking.* The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of §5.105 of this title, and with the requirements of 24 CFR part 5, subpart L, protection for victims of domestic violence, dating violence, 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) Prohibiting 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) In cases of criminal activity related to domestic violence, dating violence, or stalking, the victim protections of 24 CFR part 5, subpart L, apply.

#### 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 24 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.

(3) The PHA may establish policies that prohibit more than one move by the family during any one year period.

(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 with 982.552 (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 982.314 (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 sample* 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; and at the HAP contract anniversary if there is a 5 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 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 5 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 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 15 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

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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.)

(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*. The provisions of this paragraph (n) apply to the first SEMAP certification due after July 2, 2012.

(1) *The indicator*: This indicator shows whether the PHA enters into HAP contracts for the number of the PHA's baseline voucher units (units that are contracted under a Consolidated ACC) for the calendar year that ends on or before the PHA's fiscal year or whether the PHA has expended its allocated budget authority for the same calendar year. Allocated budget authority will be based upon the PHA's eligibility, which includes budget authority obligated for the calendar year and any portion of HAP reserves attributable to the budget authority that was offset from reserves during the calendar year. Litigation units and funding will be excluded from this indicator, and new increments will be excluded for 12 months from the effective date of the increment on the Consolidated ACC. Units assisted under the voucher homeownership option and units occupied under a project-based HAP contract are included in the measurement of this indicator.

(2) *HUD verification method*: This method is based on the percent of units leased under a tenant-based or project-based HAP contract or occupied by homeowners under the voucher homeownership option during the calendar year that ends on or before the assessed PHA's fiscal year, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA's fiscal year. The percent of units leased is determined by taking unit months leased under a HAP contract and unit months occupied by homeowners under the voucher homeownership option, as shown in HUD systems for the calendar year that ends on or before the assessed PHA fiscal year, and dividing that number by the number of unit months available for leasing based on the number of baseline units available at the beginning of the calendar year.

(3) *Rating*: (i) The percent of units leased or occupied by homeowners under the voucher homeownership option, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was 98 percent or more. (20 points.)

(ii) The percent of units leased or occupied by homeowners under the voucher homeownership option, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was 95 to 97 percent. (15 points.)

(iii) The percent of units leased or occupied by homeowners under the voucher homeownership option, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was less than 95 percent. (0 points.)

(o) *Family self-sufficiency (FSS) enrollment and escrow accounts*—(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.



## Section 2 HUD Notices and Memos

### 5/31/12 *Federal Register*; Revision to the Section 8 Management Assessment Program Lease-Up Indicator

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### 24 CFR Part 985

[Docket No. FR-5532-F-02]

RIN 2577-AC76

#### Revision to the Section 8 Management Assessment Program Lease-Up Indicator

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations for the Section 8 Management Assessment program (SEMAP), by revising the process by which HUD measures and verifies performance under the SEMAP lease-up indicator. Specifically, HUD amends the existing regulation to reflect that assessment of a public housing agency's (PHA) leasing indicator will be based on a calendar year cycle, rather than a fiscal year cycle, which would increase administrative efficiencies for PHAs. This rule also clarifies that units assisted under the voucher homeownership option or occupied under a project-based housing assistance payments (HAP) contract are included in the assessment of PHA units leased.

**DATES:** *Effective:* July 2, 2012.

#### FOR FURTHER INFORMATION CONTACT:

Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone number 202-402-2425.

#### SUPPLEMENTARY INFORMATION:

##### I. Background—Proposed Rule

On September 23, 2011, HUD published in the *Federal Register* a proposed rule, at 76 FR 59069, that proposed to revise the process by which HUD measures and verifies performance under the SEMAP lease-up indicator. HUD initiated that proposal to align the SEMAP lease-up indicator with the

process for measuring voucher management system leasing and cost data, which by statute must be done on a calendar year cycle.

As provided in the preamble to the proposed rule, the Consolidated Appropriations Act, 2005 (Pub. L. 108-447, 118 Stat. 2809, approved December 8, 2004) addressed the subject of voucher management system leasing and cost data. The 2005 Consolidated Appropriations Act stated, in relevant part, that "the Secretary for the calendar year 2005 funding cycle shall renew such contracts for each public housing agency based on verified Voucher Management System (VMS) leasing and cost data." (See 118 Stat. 3295.) Following enactment of the 2005 Consolidated Appropriations Act, the Office of Public and Indian Housing (PIH) issued PIH Notice 2005-1, which provides that "PHAs will receive monthly disbursements from HUD on the basis of the PHA's calculated calendar year budget." Since 2005, consistent with the 2005 appropriations act and the implementing notice, and consistent with subsequent appropriations acts, HUD has provided PHAs with renewal funding for their Housing Choice Voucher (HCV) program on a calendar year basis. At the beginning of each calendar year, PHAs are notified of their funding amounts for the calendar year, and they plan their voucher issuance and leasing according to that funding cycle.

As the preamble to the proposed rule further noted, in contrast to the process for measuring VMS leasing and cost data, the SEMAP lease-up indicator continues to measure a PHA's lease-up rate on a fiscal year basis. The use of a calendar year for renewal funding, while using a fiscal year system for SEMAP measurements, has resulted in increased complexity for PHAs administering the HCV program and programmatic inefficiency. To eliminate such complexity, and reduce inefficiency in the HCV program resulting from two processes based on different periods of measurement, HUD, through the September 23, 2011, rule, proposed to amend the SEMAP regulations to provide for the SEMAP lease-up indicator to be measured based on a calendar year funding cycle, rather than the existing fiscal year cycle. The September 23, 2011, rule also proposed to clarify that units assisted under the voucher homeownership option or occupied under a project-based voucher (PBV) housing assistance payments (HAP) contract are included in the assessment of PHA units leased. These homeownership units and project-based voucher units have always been

included in the assessment, but this is not explicit in current regulations.

##### II. Public Comments on Proposed Rule

At the close of public comment period on October 24, 2011, HUD received five public comments. The commenters consisted of two individuals, two PHAs and an independent nonprofit institute. With the exception of one of the PHAs, the commenters supported the changes proposed by the September 23, 2011, rule. The two individual commenters expressed their support for the rule without proposing any additional changes, with one of the commenters stating that the change was long overdue. The other two commenters supporting the rule proposed additional changes, and the PHA that did not favor the change appears to have misunderstood some of the program requirements.

In response to public comment, HUD revised the proposed rule at this final rule stage, to clarify what allocated budget authority includes. With the exception of this change, no further changes were made. The following addresses the comments raised by the latter three commenters.

*Comment: The Proposed Change Will Not Increase Efficiency.* One of the PHA commenters stated that it is not clear how HUD's proposed regulatory change to the SEMAP lease-up indicator would be beneficial to PHAs, since the financial settlement is due at the end of the PHA's fiscal year. The commenter stated that the proposed rule missed the connection between fiscal year end and utilization. The commenter stated that, as a PHA, it has to track HCVs and funding on a fiscal year basis because it cannot over-utilize unit months at fiscal year end, since it would not be paid by HUD for those months. The commenter stated that by changing this indicator, the PHA will now have to perform double tracking at fiscal year-end for fiscal year-end settlement, and at calendar year-end for SEMAP, which is actually more work, and that all other SEMAP measures would be tracked on a fiscal year basis, creating more complexity and confusion. The commenter stated that the only way this change would be beneficial is if HUD moved the year end settlement for PHAs from fiscal year to calendar year end and moved all the SEMAP indicators to calendar year.

*HUD Response:* HUD has not required year-end settlement statements from PHAs ever since the issuance of PIH Notice 2006-3 (section 5), which rescinded the requirement to submit form HUD-52681, because the relevant information was being captured in the

VMS and Financial Assessment Subsystem.<sup>1</sup> This rescission applied to PHAs with fiscal years ending on or after December 31, 2004. In regard to overutilization, all HUD appropriations acts including and since 2005 have prohibited PHAs from using their renewal funding to support a total number of unit months that exceeds the agency's authorized level of units under contract. Notice PIH 2005-1<sup>2</sup> and subsequent funding implementation notices have clarified that over-leasing applies to a calendar year and not a PHA's fiscal year. The Department sees no need to move the measurement period for other SEMAP indicators to a calendar year. They will continue to be assessed by fiscal year to coincide with the current SEMAP cycle.

*Comment: PBV Units Should Not Be the Only Units Not Counted as Leased for SEMAP Evaluation.* The other PHA commenter expressed appreciation for the rule's attempt to clarify the treatment of voucher homeownership units and PBV units in the lease-up indicator, but disagreed that only PBV units that are leased-up should be counted as leased for purposes of SEMAP evaluation. The commenter stated that a PHA has a contractual commitment to provide subsidies to those specific units in one or many PBV projects. The commenter recommended that PHAs have the option to include as "unit-months-leased" all PBV units that are under an Agreement to Enter into Housing Assistance Payment (AHAP) contract or HAP contract, whether occupied or not. The commenter stated that HUD has paid administrative fees for PBV units under contract (as reported in VMS) which, the commenter states, also supports counting them as leased in the SEMAP indicator. The commenter further stated that when a PHA's HCV utilization rate is high, the PHA should "reserve" HCVs so that they will be available when a project under an AHAP is completed and is ready to lease up, and that similarly, a project that is under a HAP contract represents a commitment by the PHA of that many HCVs, so the PHA may need to hold turnover HCVs so they will be available to assist new PBV residents as they qualify and move in. The commenter stated that in both of these situations, the PHA should not be penalized under SEMAP as "underutilized," and all of the HCVs committed under the AHAP or HAP

should be counted as leased-up, at the PHA's option.

This commenter also stated that HUD should also continue to make allowance for HCVs reserved for AHAP and HAP contracts when calculating renewal funding. The commenter stated that it recognizes that not all HCVs under an AHAP or HAP should be counted as leased for purposes of determining overutilization. HCVs are over-leased when a PHA has more "unit-months leased" over the course of a calendar year than the authorized number of "unit-months available." The commenter stated that for that calculation, HUD should continue to count only those PBV units that are actually leased up, and then allow the PHA to exclude units with "zero-HAP" or fully abated rent. The commenter concluded by stating that SEMAP does not penalize a PHA for HCV overutilization, and the commenter supports continuing that approach.

*HUD Response:* The purpose of this rule is to change the leasing period from the PHA's fiscal year to the calendar year. The identification of which units are included in the SEMAP leasing indicator was clarified in the proposed rule, not changed. It is not the purpose of this rule to change the type of HCV units included or excluded in the indicator. HUD intends to issue another proposed rule that will more comprehensively address the utilization indicator, as well as other SEMAP indicators. HUD will consider these comments in the development of that proposed rule.

*Comment: Clarify Whether HCVs Award for Special Programs Are Included in the SEMAP Lease-Up Indicator.* The same PHA recommended that HUD further clarify SEMAP by stating whether HCVs awarded for special programs are or are not included in the lease-up indicator. The commenter stated that many of those programs (most of which were created after SEMAP began) have separate procedures or requirements that reduce the PHA's control over utilization, such as requiring referrals or services from other agencies. The commenter stated that SEMAP should not penalize the PHA if underutilization in those special programs reduces overall utilization. The commenter stated that it administers the following types of HCVs: Regular tenant-based HCVs; HCVs that the PHA has approved for PBV use (about 10 percent of its HCV allocation), disability HCVs (formerly Mainstream), HUD-Veterans Administration Supportive Housing (VASH) HCVs, and Family Unification Program (FUP) HCVs. The commenter

requested that HUD advise if these HCVs are to be included in the SEMAP lease-up indicator. The commenter stated that subsidies for Section 8 Moderate Rehabilitation Single Room Occupancy (Mod Rehab SRO) units should not be evaluated under SEMAP, since these units are funded and operated separately from the other Section 8 programs.

*HUD Response:* The only special purpose HCVs that are excluded from the SEMAP leasing indicator are HUD-VASH HCVs. This exclusion was recorded in the *Section 8 Housing Choice Vouchers: Revised Implementation of the of the HUD-VA Supportive Housing Program* published in the **Federal Register** on March 23, 2012, at 77 FR 17086. No other special purpose HCVs have been excluded from the leasing indicator. Again, it is not the purpose of this rule to change the type of HCV units that are included or excluded in the indicator. However, when the broader SEMAP rule is developed, these comments will be considered. No Moderate Rehabilitation program units are included in any indicator under SEMAP.

*Comment: Clarify Only New Increments of HCVs in the Assessed Calendar Year Are Exempt from Lease-up Measure.* The nonprofit institute commenter stated that under the existing regulations, PHAs are effectively granted a 12-month grace period to lease new HCV increments. The commenter stated that the proposed rule intends to change this blanket 12-month grace period to a variable period and that PHAs would not be held accountable for leasing new HCVs for the remainder of the calendar year in which they are issued. The commenter stated that in exempting units from the baseline, the proposed rule did not clearly distinguish between renewal funding and ongoing units, on the one hand, and new increments. The commenter suggested that to clearly achieve this purpose, the final rule should modify the last sentence of proposed § 985.3(n)(1), by inserting the word "initially" in the first clause as follows: "Units and funding initially contracted under an ACC during the assessed calendar year \* \* \* are not included in the baseline number of voucher units."

The commenter, in further support of this suggested change, stated that the proposed rule strikes a better balance than current policy in that it acknowledges both that the leasing-up of new increments may be delayed for reasons beyond the PHA's control and that the great majority of new HCVs require far less than 12 months to lease

<sup>1</sup> See [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_8980.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_8980.pdf).

<sup>2</sup> See [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_9075.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9075.pdf).

up. The commenter further stated that the proposed SEMAP lease-up indicator appears to count all leased HCVs in the numerator, including those from new increments, while excluding those increments from the denominator during the grace period, thereby artificially raising the utilization rate for affected agencies. The commenter stated that shortening the grace period would reduce the effect of this bias, and is also more consistent with HUD's renewal funding policy in recent years that assumes that all tenant protection HCVs can be leased within 90 days of award. The commenter stated that while PHAs receiving new increments in the last quarter of the calendar year would in effect be held to a more demanding standard under the proposed rule, the impact on leasing performance is likely to be small and justified by the simplicity of a clear calendar year-based measure.

The commenter further states that for some types of new HCV awards made near the end of the calendar year, it may be desirable to allow a longer period for initial leasing than allowed under the proposed rule, and that this may be particularly true when PHAs are required to coordinate with service providers before issuing the new HCVs to special populations, such as in the case of VASH or FUP HCVs. The commenter offered that rushing the leasing of such HCVs may be short-sighted, and undermine the goal of promoting ongoing partnerships between PHAs and service-providing agencies.

The commenter concluded with the recommendation that the final rule allow HUD to exempt, on a case-by-case basis, particular HCV increments from the baseline for an additional calendar year when a longer period for initial leasing would advance the goals of the award.

**HUD Response:** The Department did not intend, through this rule, to change the period of time that new units are excluded from the utilization calculation. Accordingly, this language is clarified in the final rule. As pointed out by the commenter, to exclude the units just for the calendar year in which they were awarded causes units to be excluded for variable periods depending on the month they are awarded, and such exclusion would unfairly penalize PHAs that receive new allocations late in the assessed year. The Department appreciates the commenter's concerns that a 12-month period may be too long of a period for PHAs to be given to utilize new HCVs. These comments will be considered in the broader SEMAP rule that is currently under

development. The Department will also consider the comments regarding the potential need for longer leasing time for HCVs that serve special populations or rely on third-party referrals, as well as granting extensions to certain increments on a case-by-case basis if doing so would advance the goals of the award.

**Comment: Exempt Litigation HCV Units and Funding on a Temporary, not Permanent, Basis from the Lease-Up Measure.** The nonprofit institute commenter suggested another change to be made at the final rule stage. The commenter stated that the proposed rule is somewhat ambiguous but appears to exempt units and funding obligated as part of litigation from the baseline number of HCVs permanently, and not just in the calendar year of initial issuance. The commenter stated that it is important to provide flexibility in the treatment of litigation HCVs, because past experience has shown that litigation-related HCV awards can take several years to be fully leased, due to litigation-imposed restrictions on the uses of the HCVs. The commenter stated that a permanent exemption is unnecessary to address this concern, and reduces the incentive to lease these HCVs once barriers have been overcome.

The commenter recommended that HUD provide temporary exclusions from PHAs' HCV baseline, on a case-by-case basis, for litigation HCVs.

**HUD Response:** While these comments are appreciated, the subject of this rulemaking is only the period of assessment for the leasing indicator. However, HUD will consider these comments in the development of the broader SEMAP rule.

**Comment: Determination of Funds "Allocated" Should Include Certain Renewal Funding.** The independent nonprofit institute commenter stated that a determination of funds "allocated" should include renewal funding for which PHAs are eligible, after proration, but that is not provided due to an offset of excess reserves (net restricted assets). The commenter stated that in 2008 and 2009, Congress directed HUD to offset renewal funding due PHAs under the prescribed renewal formula by excess unspent funds from prior years. (HUD requires PHAs to hold such reserves in a "net restricted assets" account.) The commenter stated that there is a high likelihood that HUD will be required or would opt to use similar policies in 2012 and future years, and that the premise of such an offset policy is that PHAs will in fact use the offset funds to support HCVs during the calendar year. The commenter stated

that to align the measure of lease-up performance with Congressional intent, it is essential that funds offset are included in the determination of "allocated budget authority" that may be used as the denominator in the rating measure.

The commenter recommended that the final rule either should define "allocated budget authority" to include funds offset in determining the calendar year renewal allocation, or should add language regarding the inclusion of offset funds in the denominator of the measure.

**HUD Response:** HUD agrees that, for purposes of SEMAP, it is important to clarify what is considered in "allocated budget authority." Therefore, the final rule has been revised to clarify what allocated budget authority includes.

**Comment: Allow Credit for HCV Set-Aside for Project-Basing.** The nonprofit institute commenter recommended that HUD give PHAs credit for HCVs set-aside for project-basing. The commenter stated that PHAs that commit to project-base HCVs in properties that are not immediately available for occupancy may have to reserve all or a portion of the promised HCVs and funding in order not to exceed the authorized HCV cap or available funds when the units become available. The commenter stated that whether a PHA has to "shelve" HCVs to meet project-basing commitments depends on the number of PBVs committed in relation to the size of the PHA's portfolio, its turnover rate, and other factors. The commenter stated that appropriations acts in recent years have recognized this reality by requiring HUD to adjust renewal funding allocations for PHAs that have not used a portion of their HCVs to meet project-basing commitments.

The commenter recommended that the measure of performance for the SEMAP lease-up indicator also should recognize this limited exception, to balance the vital policy of encouraging PHAs to serve the maximum number of families possible with the policy goals of encouraging mixed-income and supportive housing developments.

**HUD Response:** See HUD's response to the second comment.

### III. Findings and Certifications

#### 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 certified that the proposed regulations would not have a significant economic impact on a substantial number of entities, and that assessment is not changed by this final rule. This rule is directed to increasing administrative efficiencies for PHAs, by aligning the cycle for renewal funding with the cycle for SEMAP measurements. This rule would also provide clarification for PHAs regarding units included in this measure.

#### *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. This rule is limited to the means by which PHAs lease-up rates are measured. 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).

#### *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 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.

#### *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 does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

#### **List of Subjects in 24 CFR Part 985**

Grant programs—housing and community development, Housing, Rent

subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 985 as follows:

#### **PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

■ 1. The authority citation for part 985 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

■ 2. Revise § 985.3(n) as follows:

#### **§ 985.3 Indicators, HUD verification methods, and ratings.**

\* \* \* \* \*

(n) *Lease-up.* The provisions of this paragraph (n) apply to the first SEMAP certification due after July 2, 2012.

(1) *The indicator:* This indicator shows whether the PHA enters into HAP contracts for the number of the PHA's baseline voucher units (units that are contracted under a Consolidated ACC) for the calendar year that ends on or before the PHA's fiscal year or whether the PHA has expended its allocated budget authority for the same calendar year. Allocated budget authority will be based upon the PHA's eligibility, which includes budget authority obligated for the calendar year and any portion of HAP reserves attributable to the budget authority that was offset from reserves during the calendar year. Litigation units and funding will be excluded from this indicator, and new increments will be excluded for 12 months from the effective date of the increment on the Consolidated ACC. Units assisted under the voucher homeownership option and units occupied under a project-based HAP contract are included in the measurement of this indicator.

(2) *HUD verification method:* This method is based on the percent of units leased under a tenant-based or project-based HAP contract or occupied by homeowners under the voucher homeownership option during the calendar year that ends on or before the assessed PHA's fiscal year, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA's fiscal year. The percent of units leased is determined by taking unit months leased under a HAP contract and unit months occupied by homeowners under the voucher homeownership option, as shown in HUD systems for the calendar year that ends on or before the assessed PHA fiscal year, and dividing that number by the number of unit months available for leasing based on the

number of baseline units available at the beginning of the calendar year.

(3) *Rating:* (i) The percent of units leased or occupied by homeowners under the voucher homeownership option, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was 98 percent or more. (20 points.)

(ii) The percent of units leased or occupied by homeowners under the voucher homeownership option, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was 95 to 97 percent. (15 points.)

(iii) The percent of units leased or occupied by homeowners under the voucher homeownership option, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was less than 95 percent. (0 points.)

\* \* \* \* \*

Dated: May 23, 2012.

**Sandra B. Henriquez,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 2012–13198 Filed 5–30–12; 8:45 am]

**BILLING CODE 4210–67–P**

**10/25/12 Notice PIH 2012-44 (HA); Section Eight Management Assessment Program Guide**

**U.S. Department of Housing and Urban Development  
Office of 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 2012-44 (HA)**

Issued: October 25, 2012

Expires: This Notice remains effective until  
amended, superseded, or rescinded

Cross References: HUD Notice 2005-33

**Subject: Section Eight Management Assessment Program Guidance**

1. **Purpose.** The purpose of the notice is to clarify certain issues regarding the submission, scoring, and appeal process for the Section Eight Management Assessment Program (SEMAP).
2. **Submission Issues.** In accordance with 24 CFR § 985.101(a), a public housing agency (PHA) must submit the HUD-required SEMAP certification form into the Management Information System (MIS) under the Public and Indian Housing Information Center (PIC) module within 60 calendar days from the end of its fiscal year. Clarified below are the submission deadlines based on the PHA's fiscal year end date:

<b><u>Fiscal Year End Date</u></b>	<b><u>Submission Deadline</u></b>
March 31	May 30
June 30	August 29
September 30	November 29
December 31	February 29/March 1

Moving to Work (MTW) agencies are exempt from SEMAP as stated in their respective MTW agreements.

3. **Leasing Indicator.** The score for the leasing indicator, 24 CFR § 985.3(n), will be based on data provided by the Financial Management Center (FMC) to the field offices for SEMAP scoring purposes. With the *Federal Register* publication, *Revision to the Section 8 Management Assessment Program Lease-Up Indicator*, on May 31, 2012, all PHAs will be scored based on leasing data at the end of the calendar year (CY) that ends on or before their fiscal year. PHAs must report leasing and expense data accurately and timely in HUD systems (i.e., the Voucher

Management System (VMS)). This means that all PHA leasing and expense data, as well as any known prior months' corrections for the CY, should be in VMS no later than January 22<sup>nd</sup>. Once the FMC has provided leasing and expense information from VMS to the field offices for SEMAP scoring, any appeals of the SEMAP leasing indicator score related to data reporting will only be considered for circumstances outside of the PHA's control (e.g., late portability payment from a receiving PHA for multiple months).

4. **PIC Reporting Rate.** PHAs are still required to have a minimum reporting rate of **94.5 percent** in order to be scored on the PIC-related SEMAP indicators. The reporting rate is computed using the number of Family Reports (form HUD-50058) in PIC as the numerator, and the number of units leased at the end of the last month of the PHA's fiscal year (as reported in VMS and then imported into PIC) as the denominator. PIC-related indicators include: (1) annual reexaminations; (2) correct tenant rent calculations; (3) pre-contract housing quality standards (HQS) inspections; (4) annual housing quality standards (HQS) inspections; and (5) family self-sufficiency enrollment and escrow accounts.
  
5. **Biennial SEMAP Certifications.** On June 24, 2003, HUD published in the *Federal Register* a final rule (*Deregulation for Small PHAs*) that streamlined certain requirements for small PHAs. In accordance with 24 CFR § 985.105(a)(2), HUD shall assess and score the performance of a PHA with less than 250 assisted units (contracted under an Annual Contributions Contract) once every other PHA fiscal year unless the PHA elects to have its performance assessed on an annual basis or is designated as troubled. If a PHA submits a certification in an exempt year, it will be scored. In accordance with the aforementioned final rule, listed below is the schedule of SEMAP submissions for small PHAs:
 

PHAs with fiscal years ending September 30, 2012, to June 30 2013, must report

PHAs with fiscal years ending September 30, 2013, to June 30, 2014, are exempt,

PHAs with fiscal years ending September 30, 2014, to June 30, 2015, must report,

etc.
  
6. **Modified or Withheld Scores.** In accordance with 24 CFR § 985.103(e), a PHA's overall performance rating can always be modified when first issued (or subsequently) should information become available that would affect the assessed year's SEMAP certification. An overall performance rating can also be withheld. The field office director may withhold or modify the overall performance rating when warranted by circumstances which have bearing on the SEMAP indicators.

Information which may be considered includes, but is not limited to: evidence of noncompliance with civil rights and fair housing laws and regulations; adverse litigation; a voluntary compliance 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 non-compliance with program requirements, which may be identified as a result of on-site or remote monitoring reviews, audited financial statements, or other information contained in



HUD reporting systems. In addition to the items reference in 24 CFR § 985.103(e), information that may be considered also includes evidence of a conciliation agreement under the Fair Housing Act, a voluntary compliance agreement under Section 504 of the Rehabilitation Act of 1973 or under Title II or III of the Americans With Disabilities Act, or any other applicable fair housing or civil rights law.

The circumstances do not have to impact the score of an indicator in order to be considered to have a bearing on the indicator. For example, the use of HAP resources for any purpose other than providing HAP to families in order to lease units has a direct bearing on the ability of families to lease up in the program even though such activity may not result in the PHA receiving a lower score due to the way points are awarded under the indicator .

7. **Family Self-Sufficiency (FSS) FSS Participants with Escrow Balances.** The percentage of FSS participants with escrow account balances that is computed for SEMAP Indicator 14b includes only families in the PHA's voucher FSS program with FSS Progress Reports. In computing the percentage, families whose latest FSS report on their form HUD-50058 or HUD-50058 MTW is an FSS Enrollment Report are excluded since those families are not eligible for FSS escrow. To calculate the percentage correctly, the total number of FSS families with positive escrow balances and/or escrow disbursed is divided by the number of FSS families with FSS Progress Reports in PIC. Families that moved under portability that are still under FSS contract in the assessed PHA's FSS program should be included in the totals.
8. **Confirmatory Reviews.** Although random confirmatory reviews may be conducted at any time, in accordance with 24 CFR § 985.105(d), 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. However, if this review has not been completed by the date the PHA's subsequent fiscal year's SEMAP certification is due to be scored, the field office will not be able to score any indicators in the SEMAP module. In these cases, the field office should notify the PHA that its rating from the previous year remains in place and the PHA remains troubled until a confirmatory review is performed. Once a confirmatory review is completed, issued, and the date of issuance entered into PIC, the score and designation can be changed, if warranted, based on the outcome of the review. The PHA must then be notified of its SEMAP score at that time.
9. **Appeals.** Any appeal of a PHA's overall SEMAP rating must be submitted via PIC SEMAP and a written appeal to the local field office no later than 30 calendar days from the date of the notification letter of the PHA's score and performance designation. Appeals may only be submitted if there would be a change in the performance designation (i.e., troubled to standard or high or standard to high). The field office director must accept or deny the appeal and notify the PHA within 30 calendar days following the date of the PHA appeal letter. A PHA may further appeal its SEMAP performance designation to the Assistant Secretary for Public

and Indian Housing no later than 30 calendar days following the field office's denial of the initial appeal. Headquarters will notify the field office of the results of the appeal. Any changes to the SEMAP score and performance designation must be entered into PIC by the field office within 10 calendar days of the date of Headquarters' letter of acceptance of the appeal. The SEMAP score and designation will remain final for the PHA's entire fiscal year unless changed through the appeal process described here.

**10. Information Contact.** Inquiries about this notice should be directed to Phyllis Smelkinson in the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs via email at: [Phyllis.Smelkinson@hud.gov](mailto:Phyllis.Smelkinson@hud.gov).

**11. 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 2577-0215.

/s/

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Sandra B. Henriquez, Assistant Secretary for  
Public and Indian Housing

## 6/25/14 *Federal Register*; HUD Implementation of Fiscal Year 2014 Appropriations Provisions



35940

Federal Register / Vol. 79, No. 122 / Wednesday, June 25, 2014 / Rules and Regulations

### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### 24 CFR Parts 5, 943, and 982

[Docket No. FR-5778-N-01]

#### HUD Implementation of Fiscal Year 2014 Appropriations Provisions on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition, and Utility Allowances

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner and Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of statutory changes.

**SUMMARY:** Section 243 of the Department of Housing and Urban Development Appropriations Act, 2014 (2014 Appropriations Act) authorizes HUD to implement certain statutory changes to the United States Housing Act of 1937 made by the 2014 Appropriations Act through notice followed by notice and comment rulemaking. This notice establishes the terms and conditions by which HUD will implement changes to the statutory definition of a “public housing agency” (PHA), the frequency of housing inspections, the statutory definition of “extremely low-income,” and utility allowances for tenant-paid utilities.

**DATES:** *Effective Date:* July 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** For Public Housing and Voucher program questions, contact Michael Dennis, Director of the Office of Housing Voucher Programs, Department of Housing and Urban Development, 451 7th Street SW., Room 4228, Washington,

DC 20410; telephone number 202-402-4059 (this is not a toll-free number). For questions regarding the multifamily programs, contact Claire Brolin, 451 7th Street SW., Suite 6138, Washington, DC 20410 at 202-402-6634 (this is not a toll-free number). Persons with hearing or speech impairments may access either of these numbers through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The general provisions of the 2014 Appropriations Act<sup>1</sup> include five statutory changes to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) that are designed to reduce administrative burdens on PHAs, enable PHAs to better target assistance to families in need of such assistance, and reduce Federal costs.<sup>2</sup> Expediting the implementation of these provisions through notice will help PHAs to benefit from the changes in the law sooner than if implementation was accomplished solely through public rulemaking. The only statutory change that is applicable to multifamily project-based section 8 programs is the added definition of “extremely low-income” in section 238. For all other statutory changes, the changes provided in this notice apply only to the public housing and section 8 voucher programs.

Section 212 of the 2014 Appropriations Act amends the definition of a PHA to include a consortium of such entities.

Section 220 allows PHAs to comply with the requirement to inspect assisted dwelling units during the term of a housing assistance payment (HAP) contract by conducting biennial housing quality inspections instead of annual inspections. PHAs are also able to utilize alternative inspection methods to demonstrate that housing meets the housing quality requirements under the voucher program.

Section 238 creates a statutory definition of “extremely low-income families,” which is defined as very low-income families whose incomes do not exceed the higher of the Federal poverty level or 30 percent of Area Median Income.

Section 242 establishes a cap on the utility allowance for families leasing

oversized units. The cap is set at an amount based on family size rather than the size of the unit leased, with the ability to set a higher amount to provide a reasonable accommodation to the family of a person with disabilities, harmonizing the utility allowance standard with the payment standard requirement.

In order to allow PHAs to receive, as quickly as possible, the benefit of the reduced burden that these provisions are designed to achieve, the 2014 Appropriations Act authorizes HUD to implement the changes through notice, provided that HUD follows with notice and comment rulemaking within six months of the issuance of the notice.

##### II. Implementation Requirements

###### A. PHA Consortia

Section 212 of the 2014 Appropriations Act amends the definition of “public housing agency” at subparagraph (A) of section 3(b)(6) of the 1937 Act (42 U.S.C. 1437a(b)(6)(A)) to include in its general definition “a consortium of such entities or bodies as approved by the Secretary.” PHAs may follow 24 CFR part 943 to form, participate in, and utilize consortia. PHAs may request a waiver of any current provision related to consortium organization, elements of the agreement, the relationship between HUD and the consortium, and the responsibilities of the consortium.

The Secretary will not approve any consortium of PHAs for administration of multifamily project-based section 8 program contracts.

###### B. Biennial Inspections

Section 220 of the 2014 Appropriations Act allows PHAs to comply with the requirement to inspect assisted dwelling units during the term of a HAP contract by inspecting such units not less than biennially instead of annually and to rely upon alternative inspection methods to meet this requirement. However, a PHA may not use the alternative inspection method in lieu of the initial unit or any interim inspection. PHAs are still required to conduct an initial inspection, prior to entering into a HAP contract, and interim inspections, if a family or government official notifies the PHA of a unit’s failure to comply with housing quality standards, in accordance with the housing quality standards (HQS) of the HCV program.

###### 1. In General

In order to bring relief to PHAs and owners as expeditiously as possible, HUD is implementing certain elements

<sup>1</sup> HUD’s 2014 Appropriations Act is Title II of Division L of Public Law 113-76, 128 Stat. 5, approved January 17, 2014. See Public Law 113-76 at 128 Stat. 604.

<sup>2</sup> The five general provisions are sections 210, 212, 220, 238, and 242. This notice addresses sections 212, 220, 238, and 242. Section 210, which pertains to flat rents is addressed separately PIH Notice 2014-12, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=14-12pihn.pdf>.

of section 220 through this notice in a somewhat limited fashion. HUD recognizes that fuller implementation of these elements (e.g., the use of alternative inspection methodologies and the treatment of mixed-finance properties) may necessitate additional complexity and certain trade-offs, and that HUD will greatly benefit from stakeholder input on how best to effectuate these statutory changes through the rulemaking process.

Section 220 will be immediately effective for any unit under HAP contract where the PHA has conducted an HQS inspection within the 12 months preceding the effective date of this notice. If a PHA has conducted an HQS inspection in that time period, the PHA will not be required to re-inspect until the lapse of 24 months following their last inspection. If the most recent inspection occurred prior to the 12 months preceding the effective date of this notice, then the PHA is required to conduct an annual HQS inspection for that unit and is afforded no relief from that annual inspection responsibility as a result of the change in the law. However, once that unit has been inspected, the PHA will then have the option to wait up until two years before the next inspection is required.

This notice does not require a PHA to wait two years from the last inspection before conducting an inspection. If a PHA desires to make inspections on a more frequent basis, it may do so.

Currently, HUD's Section 8 Management Assessment Program (SEMAP) evaluates PHAs on the frequency with which they conduct inspections. HUD will score PHAs based on their compliance with the statutory requirement that they conduct inspections at least biennially.

## 2. Alternative Inspections

A PHA may comply with the biennial inspection requirement through reliance upon an inspection conducted for another housing assistance program. If a PHA relies on an alternative inspection to fulfill the biennial inspection requirement for a particular unit, then the PHA must identify the alternative standard in its administrative plan. Such a change may be a significant amendment to the plan, in which case the PHA must follow its PHA plan amendment and public notice requirements before utilizing the alternative inspection method.

Compliance with the biennial inspection requirement may be met by reliance upon an inspection of housing assisted under the HOME Investment Partnerships (HOME) program (under Title II of the Cranston-Gonzalez

National Affordable Housing Act, 42 U.S.C. 12701 note) or housing financed via the Treasury Department's Low-Income Housing Tax Credit program (LIHTC), taking into account the standards employed by those programs. A PHA may also comply with the biennial inspection requirement by relying upon an inspection performed by HUD, for example an inspection performed by HUD's Real Estate Assessment Center. A PHA is permitted to rely upon inspections conducted for the HOME or LIHTC program or performed by HUD with no action other than amending its administrative plan.

If a PHA wishes to rely upon an inspection conducted to a standard other than a standard listed above, then it must first submit to its local HUD Field Office a certification affirming, under penalty of perjury, that the standard "provides the same or greater protection to occupants of dwelling units meeting such standard or requirement" as would HQS. Once this certification has been submitted, the PHA must amend its administrative plan to formalize its adoption of the standard. A PHA that has chosen to rely upon an alternative inspection method must monitor any changes to the standards and requirements applicable to such method so that the PHA is made aware of any weakening of the method that would cause it to no longer meet or exceed HQS, in which case the PHA may not rely upon such method to comply with the biennial inspection requirement.

The statute makes clear that, in order for an inspection to qualify as an "alternative inspection method," 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 that employs the alternative inspection method (e.g., HOME, LIHTC). For purposes of this notice, HUD is implementing this statutory element as follows:

- 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 biennial inspection requirement.
- 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 biennial inspection requirement.
- If a property is inspected under an alternative inspection method that does not employ a pass/fail determination—for example, in the case of the LIHTC program, where deficiencies are simply

noted—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 biennial inspection requirements; if such a deficiency does exist, then the PHA may not rely on the inspection to demonstrate such compliance.

Under any circumstance described above in which a PHA is prohibited from relying on an alternative inspection methodology, the PHA must conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any noted deficiencies. The HQS inspection must take place within a reasonable period of time. HUD will solicit input through rulemaking on circumstances under which a PHA could rely upon corrective actions taken under an alternative inspection method to assure that the property is brought into compliance with the standards or requirements regarding housing quality or safety applicable to the alternative inspection method.

As with all other inspection reports, and as required by 24 CFR 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be retained for at least three years.

## 3. Interim Inspections

If a 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 24 CFR 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), 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.

## 4. Mixed-Finance Properties

Section 220 gives HUD the authority to alter the frequency of inspections for mixed-finance properties assisted with project-based vouchers to facilitate the use of an alternative inspection method. HUD intends to exercise this authority through the rulemaking process as

opposed to this implementation notice. In the interim, a unit under HAP contract must be re-inspected at least biennially, through either the regular inspection process or the alternative inspection method.

#### *C. Extremely Low-Income*

Section 238 of the 2014 Appropriations Act amends section 3 of the 1937 Act (42 U.S.C. 1437a) to add a definition of extremely low-income (ELI) families. ELI families are defined as very low-income families whose incomes do not exceed the higher of the Federal poverty level or 30 percent of Area Median Income. This provision affects the ELI targeting requirements in section 16 of the 1937 Act (42 U.S.C. 1437n) for the public housing, housing choice voucher (HCV), project-based voucher (PBV), and multifamily project-based section 8 programs. As of the effective date of this notice, compliance with the targeting requirements under each of these programs must take into account the new definition of ELI.

Beginning with the effective date of this notice, a PHA or HUD, if HUD is the contract administrator, shall meet its targeting requirements through a combination of ELI admissions prior to the effective date (using the old definition) and ELI admissions after the effective date (using the new statutory definition). Neither a PHA nor HUD may skip over a family on the waiting list if that family meets the new definition of ELI as enacted by this section.

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 and PBV programs, compliance with targeting requirements is determined for each of the PHA's fiscal years based on new admissions to both programs (i.e., a single, combined total). Not less than 75 percent of such admissions shall be ELI families.

For the multifamily project-based section 8 programs, the contract administrator (i.e., HUD or a PHA under an Annual Contributions Contract with HUD) must make available for occupancy by ELI families not less than 40 percent of the section 8-assisted dwelling units that become available for occupancy in any fiscal year.

The following example clarifies how a PHA administering the HCV and PBV programs would comply with this provision: A PHA with a fiscal year end of December 31 shall consider admissions to the HCV and PBV programs from January 1 up until the effective date of this notice using the old

definition; from the effective date of this notice through December 31, it shall consider admissions using the new definition. To further illustrate, assume the PHA admitted 50 families into their HCV program between January 1 and the effective date of this notice. Forty families were ELI (under the old definition), 6 families did not meet the old definition of ELI but would have met the new definition of ELI had it been implemented at the time of their admission, and 4 did not meet either definition of ELI. In terms of calculating the ELI targeting requirement for the period of the PHA fiscal year prior to implementation of the change in the ELI definition, only 40 families met the ELI definition with regard to the targeting requirement (not 46). Assume the PHA admitted another 50 families before the end of the PHA fiscal year and 45 of those families met the new definition of ELI. The total number of families that met the ELI requirement for the PHA fiscal year would be 85 (40 plus 45), or 85 percent.

In some communities, the extremely low-income and very low-income levels will be identical for some or all household sizes, in which case PHAs meet their ELI targeting requirements by serving VLI households, since those families meet the new definition of ELI. To reduce the work a PHA or contract administrator must do to determine which standard it should be using, HUD's Office of Policy Development and Research has calculated the new income limits for extremely low-income families, taking the previous sentence into account, and has made the new area income limits available online at <http://www.huduser.org/portal/datasets/il/il14/index.html>.

#### *D. Utility Allowances*

Section 242 of the 2014 Appropriations Act limits 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, with an exemption for families with a person with disabilities.

Under section 242, the utility allowance for a family shall be the lower of: (1) The utility allowance amount for the family unit size; or (2) the utility allowance amount for the unit size of the unit rented by the family. However, upon the request of a family that includes a person with disabilities, the PHA must approve a utility allowance higher than the applicable amount if such a higher utility allowance is needed as a reasonable accommodation in accordance with HUD's regulations in 24 CFR part 8 to make the program

accessible to and usable by the family member with a disability. This provision applies only to vouchers issued after the effective date of this notice and to current program participants. For current program participants, a PHA must implement the new allowance at the family's next annual reexamination, provided that the PHA is able to provide a family with at least 60 days' notice prior to the reexamination.

Dated: June 12, 2014.

**Carol J. Galante,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

**Milan Ozdinec,**

*Deputy Assistant Secretary for the Office of Public Housing and Voucher Program.*

[FR Doc. 2014-14915 Filed 6-24-14; 8:45 am]

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