

§ 982.353

24 CFR Ch. IX (4-1-16 Edition)

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.

(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.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23860, Apr. 30, 1998; 64 FR 13057, Mar. 16, 1999; 64 FR 26645, May 14, 1999; 65 FR 55162, Sept. 12, 2000]

§ 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.

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 61 FR 42131, Aug. 13, 1996; 64 FR 26646, May 14, 1999; 73 FR 72344, Nov. 28, 2008; 75 FR 66264, Oct. 27, 2010; 80 FR 50573, Aug. 20, 2015]

§ 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