

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Public and Indian Housing**

**24 CFR Parts 882, 887, 982, and 983**

[Docket No. R-95-1628; FR-2294-F-02]

RIN 2577-AB14

**Section 8 Certificate and Voucher  
Programs Conforming Rule**

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

**ACTION:** Final rule.

**SUMMARY:** This rule combines and conforms rules for tenant-based rental assistance under the rental certificate and the rental voucher programs. This rule also amends requirements for project-based assistance under the rental certificate program.

**EFFECTIVE DATE:** Information collections in this rule must be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Upon OMB approval of the information collections, HUD will publish a notice in the **Federal Register** announcing the effective date of the rule and adding the OMB approved control numbers. It is anticipated that this OMB approval process will be concluded, and that the rule will be made effective, by 60 days after the date of publication of this rule.

**FOR FURTHER INFORMATION CONTACT:** Madeline Hastings, Director, Rental Assistance Division, Room 4204. Telephone numbers (202) 708-2841 (voice); (202) 708-0850 (TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). See the Notice of Information Collections published elsewhere in today's issue of the **Federal Register**, inviting public comment on the estimated burden on the public associated with the rule. (Of course, as part of this process, it is possible that there will be changes made to the information collections.) No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number, to be announced by separate notice in the **Federal Register**.

**Discussion**

*History and Scope of Rule*

On February 24, 1993 HUD published a comprehensive proposed rule to combine and conform the rules for tenant-based Section 8 rental assistance under the certificate and voucher programs. (58 FR 11292) The proposed rule would also have amended requirements for project-based assistance under the Section 8 certificate program.

HUD received approximately 400 comments on the proposed rule that generally approve the broad purpose of the rule. Comments object to particular features of the rule. Many of the objections pertain to provisions implementing statutory requirements, particularly the requirement that an owner notify HUD when terminating tenancy for a business or economic reason, and the prohibition of discrimination by multifamily owners against certificate or voucher holders.

On July 18, 1994 HUD published the first portion of the comprehensive rule for the tenant-based program: The final rule on unified admission procedures. (59 FR 36662) At that time, part 982, subparts A and E were added. Today's final rule covers other aspects of the comprehensive rule for the tenant-based programs, adding 8 subparts and reserving 3 other subparts. The rule also contains the regulations for the project-based certificate program, included in part 983.

Today's final rule does not include requirements concerning:

- Calculation of the rent and housing assistance payment for the tenant or project-based programs.
- “Special housing types”: program variants to meet special housing needs, such as congregate housing, shared housing, single room occupancy housing and independent group residences.

HUD will issue a final rule on these subjects. Until the final rule is issued, these subjects will be governed by requirements in the existing program rules. The final rule may also include further revisions of program admission procedures, or subjects in today's final rule.

**I. Requirements and Plans for HA Administration of Program**

*A. Demonstrating HA Authority and Jurisdiction*

The rule provides that an HA must furnish HUD a legal opinion on the HA's jurisdiction and authority to administer the tenant-based programs. (§ 982.51) A comment suggests that

agencies already participating in the program should be exempt from this requirement.

The new rule does not add a new requirement. Since the beginning of the tenant-based programs, agencies have had to provide evidence of the HA authority and of the area where the HA was authorized to operate the programs under State and local law. A correct determination of the HA jurisdiction has important consequences for day to day administration of the program by the HA. Families may move anywhere in the HA jurisdiction, and outside the HA jurisdiction, under portability procedures. The new rule does not automatically require any new submission by the HA if the HA legal opinion is already on file with HUD, and gives HUD the necessary evidence of the HA jurisdiction and operating area. Of course, the HA must furnish new information if there is a change in State law or legal authority, such as a court decision determining the HA jurisdiction.

Under the old program regulations and handbook, the HA was required to show the governmental jurisdiction in which the HA was “not legally barred” by State law from entering and administering assistance contracts for program participants. This formulation emphasized the freedom of the participant to lease a unit anywhere the HA was not legally prohibited from administering assistance. Since the beginning of portability, a participant family could move outside the jurisdiction of the original HA (for non-resident applicants, portability applies after the first year in the program). In the final rule, the term “jurisdiction” is defined as the area where the HA is authorized to administer the program under State or local law. (§ 982.4)

*B. HA Local Policies*

The HA must adopt a plan that states HA local policies for running the tenant-based program. Under the proposed rule, the HA adopted local policies governing all major aspects of HA program administration. In accordance with past practice, the HA would have been required to adopt both an “administrative plan” for general program administration, and a separate “equal opportunity plan” for compliance with fair housing requirements. The proposed rule provided that the HA administrative plan and equal opportunity plan be approved in advance by HUD.

Comments largely commend HUD for allowing HAs broad discretion to adopt local policies for operation of the tenant-based program. HUD should

direct what subjects must be covered by HA administrative policies, while leaving HAs discretion on how to regulate the prescribed subjects. Comments particularly welcome new regulatory provisions confirming that an HA may adopt local policies concerning family absence from the assisted unit, program participation after break up of the assisted family, maximum security deposit, and enforcement of participant obligations. (Provisions on these subjects are discussed later in the preamble.)

However, HA comments express concern with the cost and administrative burden of adopting and revising HA policies. Comments ask clarification of a proposed provision stating that the HA must revise the administrative plan or equal opportunity plan to change the policies covered by the plan. Comments recommend combining the equal opportunity and administrative plans.

Comments discuss the difficulty and delay in securing HUD approval for new HA policies. Some comments recommend a regulatory time limit for HUD review of the HA policy.

Comments suggest that the HA should be required to give notice of proposed changes in HA policies to participants and interested organizations or advocates, and that the HA should be required to give copies of the HA policies to each applicant or participant.

On reconsideration, HUD has made a number of changes in the provisions on HA local policies:

- Merging the equal opportunity and administrative plans into a single plan;
- Limiting the subjects that must be contained in the plan; and
- Eliminating the blanket requirement for HUD advance approval of HA policies in the administrative plan.

In the final rule, HUD has decided to eliminate the requirement for separate administrative and equal opportunity plans. An HA's discretionary policies will be contained in the administrative plan. This change eliminates the artificial distinction between equal opportunity issues and ordinary administrative policies. The final rule removes the requirement for separate overlapping or duplicative coverage under the prior equal opportunity and administrative plans, such as policies for selection of program participants. All aspects of program administration must be consistent with the HA's obligation to operate the program in accordance with civil rights requirements.

Under the terms of the proposed rule, the administrative plan would have

been a comprehensive statement of HA local policies for administration of the program. Under the final rule, the mandatory coverage of the administrative plan is only focussed on equal opportunity requirements and programmatic policies for the specific areas listed in the rule. (§ 982.54(d)) While HA policy and practice in other areas (such as financial management) have a vital role in operation of the tenant-based program, HUD review and oversight will focus on the results of HA policies, not on whether the HA has adopted a written policy to achieve these results (or has obtained HUD approval for such a policy).

Besides listing specific subjects that had to be included in the administrative plan, the proposed rule also would have required the HA to include unspecified "other local HA policies" for administration of the program. In the final rule, this residual category is deleted. The HA is only required to cover the specific subjects listed in the rule. In defining this mandatory coverage, HUD does not express any view that other matters are not important, or that the HA should not adopt formal written policies for the guidance of program officials. However, the decision whether to adopt such additional policies is left to the local judgment and managerial experience of the individual HA.

Before this rule, the HA was required to submit the administrative plan for HUD approval. In the final rule, this requirement is deleted. For most purposes, the HA may adopt and revise HA policies without asking for HUD approval. However, the policies in the administrative plan must comply with HUD requirements. The HA must give HUD a copy of the administrative plan. (§ 982.54(b))

By eliminating the HUD approval requirement, the new rule substantially increases the HA's day-to-day autonomy in administration of the program, and minimizes HUD interference in HA policy decisions. At the same time, HUD retains the authority for necessary oversight and audit of HA operations. If HA policies violate HUD requirements, the HA must revise the administrative plan to comply with HUD requirements. (§ 982.54(b)) Instead of using HUD administrative resources for routine review and approval of policies in the HA administrative plans, HUD can concentrate available HUD staff on discovery and correction of the most serious HA problems in managing the program.

Since the rule generally lifts the requirement for prior HUD approval of HA administrative policies, an HA can

revise its policy more quickly and easily. The HA does not need to wait for HUD approval, or negotiate changes in HA policy to satisfy the HUD reviewer, so there is no need to consider or establish a deadline for HUD review of the HA administrative plan, as suggested by some comments.

Comments ask if changes in the administrative plan must be approved by the HA board. The final rule provides that the administrative plan and any revisions of the plan must be formally adopted by the HA board or other authorized officials. (§ 982.54(a))

In certain key areas, HUD rules will continue to mandate advance HUD approval of HA policies. Residency preferences for selection of applicants must be approved by HUD. (§ 982.208(b) (59 FR 36687, July 18, 1994)) As required by law, the HA family self-sufficiency (FSS) action plan must also be approved by HUD. (42 U.S.C. 1437u(g)(1)) (If FSS policies are contained in an HA's administrative plan, the policies must be moved to the HA's FSS action plan.)

Comments state that the HA administrative plan should include HUD requirements, not just HA discretionary policies. HA comments ask if an HA must amend the administrative plan whenever HUD revises regulations or other requirements. The final rule provides that an administrative plan must state HA policy "on matters for which the HA has discretion to establish local policies." (§ 982.54(a))

Since the final rule does not require that the HA revise the administrative plan to merely echo HUD regulations or other requirements, the HA is only required to revise the administrative plan to reflect the exercise of policy choices by the individual HA. By definition, HUD "requirements" are binding on the HA in any case.

For practical administration of the program, HAs may elect to develop procedures or guidance for HA staff that reflect both HUD requirements and the HA's policy decisions in accordance with HUD requirements. As noted above, the rule no longer requires that the administrative plan must be approved in advance by HUD, so it is less critical to distinguish between HA policy mandated by HUD, as opposed to HA policy adopted in accordance with local HA discretion.

The final rule drops a proposed provision that would have required an HA to adopt policies to encourage participation by eligible families. Since many eligible families are eager to participate in the program, and most HAs have long waiting lists, HAs have

little need to stimulate family interest and demand for participation.

### C. Equal Opportunity Requirements

The rule lists federal civil rights law and regulations that apply to the tenant-based programs. (§ 982.53)

Requirements under Section 3 of the Housing and Community Development Act of 1983 apply to construction or rehabilitation under the Section 8 program, but do not apply to Section 8 tenant-based assistance. Under the final rule, reference to Section 3 requirements is moved to 24 CFR part 983, which contains the requirements for projects constructed or rehabilitated under the Section 8 project-based certificate program. (§ 982.11(c)(3)) HAs are encouraged to recruit qualified program staff in a manner that furthers Section 3 goals.

Comments recommend that the rule should require HA compliance with State and local fair housing laws. HUD believes that the federal program rule and program enforcement should only require compliance with federal fair housing requirements. State and local governments can of course impose additional requirements. The federal regulation is not intended to pre-empt the operation of such State or local laws.

Some comments recommend that the rule should impose extensive additional fair housing procedures, including HA help for persons who need assistance in presenting a claim for illegal discrimination; HA collection of fair housing data and HA analysis of barriers to housing choice; and fair housing training of HA staff. As noted above, HA operation of the program is subject to civil rights statutes and regulations. In addition, the basic structure of the tenant-based program is a powerful instrument for promoting housing choice by low income and minority families.

An HA must certify that it will comply with equal opportunity regulations and requirements. (§ 982.53(c)) A comment notes that the certification is unnecessary, since the HA must follow the law in any case. HUD agrees that the HA is bound by the law and regulations, but retains the requirement for equal opportunity certification, in accordance with historical practice in HUD programs. The certification is not burdensome, and reminds the HA of its responsibility to administer its tenant-based program in accordance with the federal fair housing requirements.

## II. Funding and HA Application for Funding

### A. Competition for Funds; Criteria for Selection

Some program funding is distributed by HUD to HAs through a competitive process. So HAs can compete for such funding, the Department publishes a public notice in the **Federal Register**, called a "Notice of Funding Availability" or "NOFA". The HUD Reform Act of 1989 provides that the **Federal Register** notice must state the "criteria" for selection of applicants. The competitive criteria in a **Federal Register** NOFA may include any objective measure of housing need, project merit and efficiency. (HUD Reform Act of 1989, Section 102(a)(3), Pub. L. 101-235, 103 Stat. 1990; 42 U.S.C. 3545(a)(3))

Under the law, HUD must publish a description of how to apply for assistance under the NOFA, including any deadlines. (Id. section 102(a)(2)) The Reform Act requirements are implemented in a HUD regulation at 24 CFR part 12. The Section 8 program regulation describes the procedure for HUD publication of a NOFA to govern competitive award of funds in accordance with part 12 (§ 982.101(c)), for HA submission of applications in accordance with the NOFA (§ 982.102(b)), and for evaluation of HA applications based on selection criteria in the NOFA (§ 982.103(a)(2)).

In recent years, HUD has published a number of NOFAs each federal fiscal year to distribute Section 8 tenant-based funding for various purposes identified in the appropriation act and conference report. For example, in federal fiscal year 1994, HUD published separate NOFAs stating criteria for award of program funding distributed under a statutory fair share formula, for funds set aside for homeless persons with disabilities, for homeless veterans with severe psychiatric or substance abuse disorders, for family self-sufficiency (FSS) program coordinators, for elderly service coordinators and for the family unification program.

Some public comments object to award of funding under selection criteria in a **Federal Register** NOFA. The comments recommend that criteria for award of funds should be determined in a full dress rulemaking, with notice and opportunity for public comment. Comments indicate that the competitive criteria should be included in the standing program regulation.

Comments also object to criteria used by HUD to select HA applications for funding. Comments state that the selection criteria should give greater

weight to efforts to further fair housing, and should penalize an applicant HA that has a residency preference or other policies that have an "exclusionary" effect. Comments state that the criteria for selection should give funding preference to HAs that do not use a residency preference for selection of applicants, and that have an open waiting list.

The competitive selection scheme under a HUD NOFA may emphasize the administrative capability of applicant HAs. Comments claim that application of this HUD selection criterion to distribution of fair share funding in some metropolitan areas tends to favor a suburban HA (with greater presumed administrative competence) over the HA for a core city. Comments also claim that emphasis on the capability criterion is too subjective. Other comments recommend that funding should be distributed by formula, rather than by a competitive process.

HUD believes that award of competitive funds according to criteria stated in a **Federal Register** notice carries out precisely the process intended by the 1989 HUD Reform Act, and the regulation adopted by HUD to implement the Reform Act requirements (24 CFR part 12). HUD is not required to establish competitive criteria by notice and comment rulemaking.

Funding for individual HUD programs, such as the Section 8 tenant-based assistance programs, is typically appropriated by the Congress in each separate fiscal year. Each year Congress determines the amount of funding available for different purposes. The breakdown of Section 8 program funding is not definitively known until enactment of the appropriation act. (The detailed breakdown is generally expressed in a Table that is included in the Conference Report.) In this context, the use of a notice and comment rulemaking process to determine criteria for competitive award of funds in each fiscal year would paralyze the administrative process, prevent the timely award of appropriated funds, and deny flexibility in determining appropriate criteria for award of funding under the annual appropriation.

Comments recommend that HUD adopt new procedures for denial of HA funding applications. The comments suggest that HUD should give the rejected applicant a written statement or checklist of the reasons for denial of the HA's application. Comments also suggest that a rejected applicant should be granted the right to appeal HUD's funding decision.

For funding awarded by a competitive process, HUD has issued regulations

under the HUD Reform Act of 1989. These regulations give broad public access to documentation of the basis for HUD decision on HA funding applications. The Reform Act rule provides that HUD must ensure that documentation on each application is "sufficient to indicate the basis on which HUD provided or denied the assistance." (24 CFR 12.14(b)(1)) Under the Reform Act rule, this documentation is available for public inspection for five years. (12.14(b)(2)) The rule for tenant-based assistance is revised to add a cross-reference to the documentation and public inspection requirements under the Reform Act rule. (§ 982.103(b)(3))

HUD has not accepted the recommendation to afford the HA applicant a right to appeal HUD's decision on HA funding applications, or to delay distribution of funds pending hearing on an HA appeal. HUD is deeply concerned that the grant of such a right would severely delay or paralyze the process for award of funds, would encourage fruitless and distracting appeals and litigation, and would result in major waste and diversion of administrative energies by HUD and the HAs. HUD seeks to award competitive funding by a fair and expeditious competition, carried out in accordance with criteria stated in a published NOFA. However, HUD will not encumber this process by adding the right to a formal appeal or hearing for the HA. Sometimes NOFAs provide a procedure for correction of allocation inequities.

#### *B. Amount of Funding: Units or Dollars*

Several comments ask HUD to provide funding to an HA for a specific number of units, rather than for a fixed allocation (amount) of funds. Under the certificate program, the HA was formerly required to maintain a HUD-approved unit distribution (by bedroom size), using the funding provided under the consolidated ACC, including any amendment funding. (Under the ACC, there is a separate ACC term for each funding increment.) In the voucher program, the unit distribution is not established by HUD. The HA is responsible for management of available voucher funding under the consolidated ACC. HUD did not provide voucher funding for ACC amendments to support a pre-determined unit mix. The HA controlled the use of available voucher funding by setting the level of subsidy for each family (payment standard), and by controlling admissions to the program.

Under recent amendments of regulatory selection requirements for

both the certificate and the voucher programs, admission from the waiting list may no longer be based on family size. (§ 982.204(d), as amended 7/18/94, 59 FR 36662 et seq.; see preamble discussion at 36666-36667) This change automatically eliminated possible inequities caused by disparities of wait-times for families of different sizes. The length of wait does not depend on the size of the family. In addition, the regulation change eliminated the problems and complexities of administering separate sub-lists for different unit sizes, as well as the requirement for the HA to maintain (in the certificate program) a HUD-determined unit distribution.

Comments ask if the HA will be required to maintain a HUD-approved unit distribution by bedroom size. Since the HA is prohibited from selection by unit size for tenant-based assistance, the HA is not required to maintain a HUD-approved unit distribution.

HUD believes that the new regulatory and administrative system is a better way of managing program funds. In the annual appropriation process, the Congress appropriates specific dollar amounts of funding (budget authority), rather than funding to support a specific number of units under each HA's consolidated ACC. HUD cannot guarantee that the funding that is appropriated by the Congress, and obligated by HUD to a specific HA, will support the changing number of units that will result from the HA's admission of families without regard to unit size, under the system provided in HUD's new regulation. Rather, the HA is in the best position to manage the available funding committed to the HA, so that the HA can continue to provide assistance for families already admitted to the program.

#### *C. Family Unification*

The proposed rule recites statutory requirements governing award of funding appropriated for "family unification" (also called "foster child care")—which is special Section 8 certificate program funding to avoid the need to place or keep children in out-of-home care. Comments recommend against providing categorical funding for family unification, object to limits on competition for family unification funds, and question why family unification does not apply to vouchers. Some comments support special funding for this purpose.

The final rule deletes the rule provisions stating statutory requirements governing family unification set-asides. When the Congress provides funding for family

unification, statutory and other requirements can be stated in the NOFA offering any family unification funding for public competition and award.

### **III. Annual Contributions Contract and HA Administration of Program**

#### *A. Annual Contributions Contract*

Comments recommend that funding for all increments in an HA's certificate or voucher program should be combined in a consolidated annual contributions contract (ACC). Under this rule and under current HUD practice, all funding for an HA's Section 8 tenant-based programs is provided under a single consolidated ACC, with separate ACC attachments that show all funding for the HA's certificate and voucher programs.

The final rule provides that commitments for all the funding increments in an HA's certificate and voucher programs are listed in one consolidated contractual document called the consolidated annual contributions contract (consolidated ACC). (§ 982.151(a)(2)) The final rule eliminates a proposed provision that would have required separate consolidated ACCs for an HA's certificate and voucher programs. In most respects, the certificate and voucher tenant-based programs are identical. In 1994, HUD combined the ACC forms for these programs into a single consolidated ACC. The single consolidated ACC provides a common contractual basis for unified administration of the tenant-based programs.

#### *B. Administrative Fees*

Administrative fees are paid by HUD to cover HA costs to run the Section 8 tenant-based assistance program. (§ 982.152) Fees must be approved by HUD. The rule describes the purposes for which fees are paid. The rule does not state how fees are calculated. The calculation of fees in each federal fiscal year is affected by the HUD budget and annual appropriations, and may be affected by other temporary legislation.

Section 8(q) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(q)) states requirements for determining administrative fees in the certificate and voucher tenant-based programs. However, the Section 8(q) requirements only apply if the HUD appropriation act so provides. Under the terms of HUD appropriations since federal fiscal year 1989, Section 8(q) requirements apply to calculation of administrative fees for so called "incremental" units. Generally, "incremental units" are new federally-assisted units, as contrasted with

renewal or replacement of expiring assistance. Other units are not subject to Section 8(q) (generally, units funded before fiscal year 1989 and funding for renewal or replacement). HUD has full discretion to set HA fees for such units.

HA comments recommend increases in HA administrative fees. Comments disagree with HUD's statement, in the preamble of the proposed rule, that administrative fees generally exceed the amount needed to administer the program. Comments point out that HAs are now required to carry out many new tasks, such as administration of family self sufficiency, portability and assistance for special populations, such as homeless persons or persons with AIDS. Comments urge that the administrative fee be based on measurement of the time needed to accomplish tasks required by HUD rules.

The rule is intended to provide a regulatory framework for periodic determination of administrative fee. The detailed procedures for fee calculation are not described in the permanent program rule. From time to time, HUD issues notices and handbooks explaining how to compute the applicable fees in accordance with the appropriations and other governing laws.

Comments recommend allowing a one-time fee for implementation of the new rule. This comment is not adopted. This rule does not radically change existing program procedures. In certain respects, the rule will significantly simplify HA administration of the program. Any change in program requirements entails some administrative burden in changing existing management practice. However, HUD does not anticipate that the transition to operation under the new rule will cause problems justifying a higher administrative fee.

### C. Ongoing Administrative Fee

#### 1. How Calculated

HUD pays a fee to the HA for every month after a unit is "under Housing Assistance Payments (HAP) Contract". This is called the "ongoing administrative fee". In accordance with current program practice, the proposed rule provided that the ongoing fee for a unit equals a HUD specified percentage of the Section 8 existing housing fair market rent for a two-bedroom unit (regardless of the actual unit size). In present program usage, different fee percentages apply to different types of units in the HA's tenant-based program. A "blended fee" percentage is calculated for the HA's whole certificate

or voucher program, reflecting the proportions of these different unit types in the HA's program.

The proposed rule did not state the percentage of the FMR that is used to calculate the administrative fee, but provided that the percentage will be "HUD-specified". For units where the ongoing fee is calculated under Section 8(q) of the U.S.H. Act (42 U.S.C. 1437f(q)) (to date, only "incremental" units), the statute provides that the amount of the administrative fee is 8.2 percent of the fair market rent for a two bedroom unit.

HUD is currently considering how the administrative fee system should be revised to fairly and adequately compensate HAs to administer the program. In the future, administrative fees may or may not be calculated as a percentage of the fair market rent. Since the future fee system is not known, the final rule does not provide that the ongoing administrative fee is calculated as a percentage of the fair market rent.

The final rule states only that the ongoing fee is established by HUD. As in the past, the ongoing fee is paid for each program unit under HAP contract on the first day of the month. (§ 982.152(b)(1)) This change leaves flexibility for future adoption of a new administrative fee system. However, under current law, the ongoing fee for units under Section 8(q) remains 8.2 percent of the two-bedroom fair market rent. On January 24, 1995, HUD published a notice revising the method for calculating administrative fees for units that are not subject to Section 8(q). (60 FR 4764)

By law, an HA that administers Section 8 assistance may contract to make assistance payments to itself as a Section 8 owner. (42 U.S.C. 1437f(a)) The final rule adds a new provision confirming that HUD may pay a lower ongoing administrative fee for HA-owned units. (§ 982.152(b)(3))

#### 2. Higher Ongoing Fee—For Small Program or Program Operating in Large Area

For units subject to Section 8(q), the law provides that HUD may decide to increase the ongoing administrative fee "if necessary to reflect the higher costs of administering *small programs and programs operating over large geographic areas*". (U.S.H. Act, Section 8(q)(1), 42 U.S.C. 1437f(q)(1)) The proposed rule would have provided that HUD could approve a higher ongoing fee for an HA program operating over a "large area". Such fees may only be approved "if appropriations are available" for this purpose.

Comments state that HUD should not pay a higher fee for an HA that operates in a large region. Comments want HUD to clarify the meaning of "large area". Comments ask HUD to allow a higher fee for an HA that must service portability families outside the HA's normal State-law jurisdiction. Comments state that the rule should allow higher ongoing fees in other cases (not just for an HA operating in a large area), including higher fees to compensate for "extenuating problems". Comments recommend that the ability to pay higher fees should not be tied to availability of appropriations.

Unlike Section 8(q), the proposed rule would not have permitted a higher ongoing fee for "small programs". Comments state that the proposed rule discriminates against HAs with small programs. They state that the rule should allow a higher fee for small programs, such as small rural programs, as well as programs operating in larger areas.

HUD can only pay administrative fees from funds (budget authority) appropriated by the Congress. HUD has amended the final rule to provide that HUD may decide to approve a higher ongoing fee in the two cases allowed by the Congress under Section 8(q)—for small programs and for programs operating in large areas. (§ 982.152(b)(2))

The two cases stated in the rule include the major circumstances where a higher ongoing fee may be justified. An HA operating in a large area may incur higher expenses to service the assisted units, for example, because of longer trips to inspect program units scattered in rural communities, than an HA whose units are clustered closer to HA offices. HAs with small programs may not benefit from economies of scale in administration of the program.

The rule does not give HAs that operate in large areas or with small programs any right to a higher ongoing fee. HUD has full discretion whether to approve any increase over the normal ongoing fee.

At this time, HUD will not attempt, as suggested by comment, to further define in this rule when a higher fee may be approved for a "large" geographic area or a "small" HA program. The field office will apply these concepts on a case by case basis, in accordance with HUD Headquarters instructions, to determine if an HA needs a higher fee for proper administration of its individual program.

### D. Preliminary Fee

HUD pays a preliminary fee for each new unit added to the HA program. (By law, the maximum preliminary fee for

Section 8(q) units is \$275 (42 U.S.C. 1437f(q)(2)(A)(i)), or \$300 for preliminary costs in the family self-sufficiency (FSS) program (42 U.S.C. 1437u(h)(1)). The preliminary fee is primarily used to cover HA costs to lease up new units under the ACC (but not for turnover or renewal of program units).

An HA is required to document amounts spent for preliminary costs, up to the allowable per unit maximum. The HA is only compensated for qualifying expenses actually "incurred". Public comments recommend eliminating the requirement for an HA to present cost justification in order to collect a preliminary fee. The comment is not adopted. The rule is revised to specify, as required by law (for units subject to Section 8(q)), that preliminary fees cover the cost of preliminary expenses that the HA "documents it has incurred" in connection with new funding from HUD. (42 U.S.C. 1437f(q)(2)(A)(i); § 982.152(c)(2))

In the past, HAs were required to submit justification to HUD for payment of the preliminary fee. Under this rule, HAs are no longer required to submit up-front justification to HUD to receive the fees. However, HAs must maintain accounting records that document preliminary costs incurred by the HA, and must make the documentation available when requested for audit by HUD.

Some comments recommend that HUD should eliminate a separate preliminary fee, or that a preliminary fee should only be paid for a new program. HAs should be compensated through the ongoing administrative fees. Other comments recommend that HUD should pay a preliminary fee for every new leasing by an assisted family, not just for the initial lease-up of a new funding increment. At this time, HUD is retaining provision for a separate preliminary fee as authorized by current law for fees calculated under Section 8(q) of the U.S. Housing Act of 1937 (when so provided in HUD's appropriation). As noted above, HUD is considering modification of the current system for calculating ongoing administrative fees.

#### E. Family Self-Sufficiency

The proposed rule would have provided that the preliminary fee may be used to cover ongoing expenses for family self-sufficiency (FSS) program activities. Some comments approve the provision for payment of ongoing family self-sufficiency expenses from the administrative fee. Other comments object that the use of preliminary fee for this purpose would reduce the amount

available to the HA for preliminary costs. FSS is an ongoing program. HAs may not have additional program increments (to generate preliminary fees that may be used for payment of FSS costs). Comments recommend payment of a special fee for FSS.

The final rule adds authorization for approval of a fee for HA costs to coordinate supportive services for families participating in the FSS program. (§ 982.152(a)(1)(v)) This special FSS fee is not linked or limited to FSS coordinator costs in connection with a new funding increment.

#### F. Helping Families Find Housing

In accordance with current practice, the proposed rule would have provided that HUD may approve a "hard-to-house" fee to cover the cost of special assistance to a family with three or more minors. Unlike the preliminary fee, a hard-to-house fee was to be paid whenever a qualifying family moved to a new assisted unit, not just for new program funding. The proposed rule also would have provided that a hard-to-house fee would not be paid for a unit that is owned by the HA.

Comments recommend an increase in the amount of the hard-to-house fee, and that the HA should be paid a hard-to-house fee to cover costs to help a family with a child under seven find a lead-free unit. Comments urge that the hard-to-house fee should also be paid for leasing of an HA-owned unit, since the HA must follow the same procedures as for a private dwelling unit.

Other comments suggest elimination of the hard-to-house fee, or recommend that HUD should not pay a hard-to-house fee unless the HA has in fact made special efforts to house a large family. Unlike the preliminary fee, HUD does not currently require the HA to document actual costs or administrative effort. The hard-to-house fee is paid for every qualifying move.

Section 8(q) provides that HUD may determine reasonable fees for: "the costs incurred in assisting families who experience difficulty (as determined by the Secretary) in obtaining appropriate housing under the programs \* \* \*" (42 U.S.C. 1437f(q)(2)(A)(ii))

The final rule provides only that HUD may approve administrative fees for "cost to help families who experience difficulty renting appropriate housing \* \* \*." (§ 982.152(a)(1)(iii)) The final rule does not use the term "hard-to-house", and does not specify that the fee is only paid for a family with three or more minors. HUD is examining all aspects of the administrative fee system. HUD will consider when HUD should pay an additional fee so that the HA can

give the family additional help in finding a rental unit.

#### G. Help for Elderly and Disabled

Under a 1992 law, Section 8(q) administrative fees may be used to employ or retain coordinators of supportive services for elderly or disabled families who receive tenant-based assistance. (42 U.S.C. 1437f(q)(3)(A), as amended by Section 675 of the Housing and Community Development Act of 1992, 106 Stat. 3828) The rule is revised to provide that HUD may approve administrative fees to cover HA cost to coordinate supportive services for elderly and disabled families. (§ 982.152(a)(1)(iv)) Supportive services include a wide range of assistance for the elderly and disabled, such as health services, nonmedical counseling, personal care, case management and other appropriate services. (See 42 U.S.C. 13631(c))

#### H. Audit Costs

The rule provides that HUD may approve an administrative fee to cover cost of audit by an independent public accountant. (§ 982.152(a)(1)(vi)) Currently, HUD pays a fee to cover costs of required audit by an independent public accountant (IPA). Public comment states HUD should list this special type of fee in the proposed rule. HUD agrees, and has revised the rule to specify that HUD may approve a separate fee for IPA audit costs.

#### I. Other Costs

In addition to the listing of specific fees that may be approved by HUD, the final rule provides that HUD may pay an additional administrative fee for "other extraordinary costs" approved by HUD. (§ 982.152(a)(1)(vii)). This category leaves HUD flexibility to approve additional amounts needed by an HA for special purposes.

The final rule does not provide for a special portability fee. Portability fees will be eliminated beginning in federal fiscal year 1996.

#### J. HA Responsibilities

The rule contains a list of some basic HA responsibilities in administration of the tenant-based programs. (§ 982.153) Comments suggest some additions to the list of HA responsibilities. The final rule revises and supplements the list of HA responsibilities as stated in the proposed rule. The final rule provides that:

—The HA determines who can live in the assisted unit, at admission and during the family's participation in the program. (§ 982.153(b)(8)) This new provision is consistent with other

provisions concerning the HA's authority to determine when a group of persons qualifies as a "family" (§ 982.201(c)(3)), to select families for admission to the program (part 982, subpart E), and to approve additional occupants of the assisted unit. (§ 982.551(h)(2))

- The HA must encourage owners to make units available for leasing in the program, including owners of suitable units located outside areas of poverty and racial concentration. (§ 982.153(b)(4))
- The HA is responsible for conducting an "informal review" of certain HA decisions concerning an applicant for participation in the program. (§ 982.153(b)(19) and § 982.554) The final rule restores the distinction in the existing rule between an "informal review" of HA decisions concerning an applicant for participation, and an "informal hearing" on HA decisions concerning a family that is already admitted to the program. (See § 982.554 and § 982.555)
- The HA must obtain and verify evidence of citizenship and eligible immigration status, as required by HUD regulations implementing statutory restrictions on assisted occupancy by certain noncitizens. (§ 982.153(b)(9); see 24 CFR part 812)
- The HA must establish and adjust a utility allowance for tenant-supplied utilities. (§ 982.153(b)(16))
- The HA must administer an FSS program. (§ 982.153(b)(22))

The final rule also specifies that the HA bears responsibility to affirmatively further fair housing goals, as well as to comply with equal opportunity requirements. (§ 982.153(b)(5))

#### K. Administrative Fee Reserve

The rule codifies ACC and handbook provisions concerning the "administrative fee reserve" (§ 982.155) This account was formerly called the "operating reserve". The administrative fee reserve is credited with excess administrative fees earned by an HA in prior years. Generally, if funds in the reserve are not needed for program administration (to the end of the last ACC funding increment), the HA has broad discretion to use administrative fee reserve funds for "other housing purposes". The purposes must be consistent with State and local law. (§ 982.155(b)(1)) The allowable purposes may include housing purposes not connected with the Section 8 programs.

In any HA fiscal year, the HA must use fee reserve funds for program administrative expenses in excess of HUD administrative fees for the year.

Such use has precedence over HA use of the fee reserve for other non-program housing purposes. HUD may prohibit use of the fee reserve for certain purposes. (§ 982.155(b)(1)) In addition, if the HA fails to administer the program adequately, the HUD field office may freeze HA use of fee reserve funds, or may direct the HA to use fee reserve funds to improve program administration or to restore funds disbursed for ineligible expenses. (§ 982.155(b)(3))

Comments recommend that HUD should relinquish any control over HA funds in the administrative fee reserve. Administrative fees should be treated like payments to other contractors for services rendered. Comments also ask HUD to clarify when the HA may use fee reserve funds for "other housing purposes."

These recommendations are not adopted. Funds in an HA's administrative fee reserve were paid to the HA by HUD to administer the HA's Section 8 program. It is important to assure that fee reserve funds are used first to cover HA administrative costs of the HA's Section 8 program, and only then are used for other housing-related purposes. The regulatory standard for use of fee reserve funds leaves the HA great flexibility to apply the funds for local housing purposes.

In accordance with historical program practice, the rule provides that the HUD field office may freeze or direct use of reserve funds if the HA has not "adequately administered" any Section 8 program. (§ 982.155(b)(3)) Comment asks HUD to clarify the methodology for determining when the HA is not adequately administering the program.

HUD believes that the regulatory formula provides sufficient guidance on the basis for freezing HA use of funds in the administrative fee reserve. This provision is designed to protect program funds, and provide a remedy for serious or systemic violations of program requirements by an HA. Such violations can occur in many ways. HUD requires a broad authority to restrict HA use of administrative fee reserve funds if the HA is not running the program in accordance with HUD requirements.

The final rule adds three limitations on the HA's authority to use the administrative fee reserve for "other housing purposes":

- The HA board of commissioners or other authorized HA officials must establish the maximum amount that may be charged against the administrative fee reserve without specific approval. (§ 982.155(b)(2))
- The HA may only use the reserve for other housing purposes if the funds

are not needed to cover HA administrative expenses through the end of HUD's funding commitment under the consolidated ACC—that is, to the end of the term of the last expiring funding increment. (§ 982.155(b)(1))

- HUD may prohibit use of administrative fee reserve funds for specified purposes. (§ 982.155(b)(1))

#### L. Depository

Program funds must be deposited to and disbursed from the HA's account with a financial institution acting as program depository. (§ 982.156) The HUD field office can freeze depository funds by giving notice to the depository institution that prohibits the depository from permitting HA withdrawals. In the final rule, the HUD notice is called a "freeze notice".

Comments say that HUD also should notify the HA when the depository is frozen. HUD agrees. The rule is revised to provide that HUD must give the HA a copy of the freeze notice from HUD to the depository.

#### M. Budget and Expenditure

Under the rule, the HA must comply with HUD program regulations and other requirements. (§ 982.52(a)) HUD requirements include the financial management procedures required by HUD. The rule does not state the details of HUD-required budget and accounting procedures.

The final rule is revised to state that the HA may only use program funds in accordance with a HUD-approved budget. (§ 982.157(b)(1)) The budget must be submitted to HUD at such time and in such form as HUD requires. (§ 982.157(a)) Previously, these requirements were stated in the consolidated ACC, but were not explicitly recited in the program rule.

Comments recommend that the Department should consolidate the budget and requisition process for the certificate and voucher programs. The Department agrees, and has established uniform budget procedures for the tenant-based programs. Of course, the budget process must continue to reflect statutory differences in the program subsidy computation for the certificate and voucher programs.

Comments ask HUD to eliminate separate budgeting and financial reporting for renewal funding (funding to provide continued assistance after the end of an ACC funding commitment). HUD procedures already have been changed to combine budgets and financial accounting for new units and renewals.

#### N. Program Records

The rule codifies and clarifies basic requirements governing the HA's obligation to maintain and retain program records. (§ 982.158) Comments approve HUD's clarification of requirements for retention of program records.

Comments recommend that HUD should reduce the burden of accounting and record-keeping requirements. Comments suggest that the rule should describe what record media are allowed or disallowed, and should specify that record-keeping requirements apply to any form of permanent, retrievable record (including electronic records), not just paper files.

The rule provides that HUD and the Comptroller General must be allowed full and free access to program accounts and records. (§ 982.158(c). See 42 U.S.C. 1435) Comments suggest that the rule should state specifically that such access must be reasonable, so that examination of HA records doesn't jeopardize HA operation.

The final rule does not describe what record-keeping media are allowed or prohibited by HUD. Such details will be provided in program handbooks or notices. However, the rule is revised to specify that program records must be in the form prescribed by HUD. (§ 982.158(a))

Since HAs now make extensive use of computers in management of the program, and since HAs often maintain major program record systems in computerized form, the rule specifies that the HA must comply with HUD requirements governing "computerized or electronic forms of record-keeping". (§ 982.158(a)) In the rule, HUD also recognizes and addresses the special problems in examination and audit of computerized records. Effective examination of such records may require knowledge of the system (hardware and software), and of passwords, commands and instructions needed to access data held in the system. The final rule specifically provides that the HA must grant the examiner (HUD or the GAO) full and free 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." (§ 982.158(c))

The rule is also revised by restating terminology and language for consistency and simplicity. In particular, the rule now refers to "records", to cover all the various accounts, forms and documentation used to maintain program information,

and including all of the media in which such data may be maintained.

HUD has not adopted the recommendation to specify that access must be reasonable. Of course, all requirements should be administered in a reasonable fashion.

An HA administering Section 8 is not subject to federal Freedom of Information Act (FOIA) and Privacy Act requirements. Comments recommend that an HA should be required to make program records available for public inspection as under the FOIA. This recommendation is not adopted. The decision whether to release or deny release of program information generally rests in the discretion of the HA, subject to any restrictions under State or local law (but see § 813.109(b) concerning disclosure of information obtained pursuant to the family's verification release or consent).

#### O. Conflict of Interest

Under the rule, certain officials or employees of an HA, contractors, subcontractors or agents of an HA, and members of Congress, are prohibited from holding a direct or indirect interest in any program contract or arrangement. (§ 982.161(a)) Members of these classes must disclose their interest or prospective interest to the HA and to HUD. (§ 982.161(b)) As in the past, a HUD field office may waive the conflicts requirements "for good cause" in an individual case. (§ 982.161(c))

A comment recommends that a request for waiver should be deemed automatically allowed unless rejected in 30 days. This recommendation is not adopted.

#### P. Contract Forms

The HA must use the contract and other program forms prescribed by HUD. (§ 982.162) Comment asks that HUD list the forms. The regulation lists certain basic program contracts that must be used. However, the rule does not give a complete list of the contracts and other program forms. A HUD handbook or other HUD directive will list the HUD-prescribed forms. There is no reason to clutter the regulation with this information.

#### Q. Fraud Recovery

Comments state that an HA has no incentive to recover program funds lost because of bad debts or fraud. In response, HUD notes that existing regulations permit an HA to retain fifty percent of Section 8 fraud losses that the HA is able to recover from a family or owner by litigation, court order or repayment agreement. (24 CFR part 792; Section 326(d) of the Housing and

Community Development Act of 1981 (42 U.S.C. 1437f note), as amended by 106 Stat. 3711, 10/28/92) The law and regulation are intended to encourage HAs to investigate and pursue fraud and abuse in the Section 8 program. The rule contains a cross-reference to the separate regulation on Section 8 fraud recoveries. (§ 982.163)

#### IV. Leasing a Unit

##### A. Information When Family Is Selected

###### 1. Briefing and Information Packet

When a family is selected to participate, the family needs to know how the program works. The HA gives the family an oral briefing, and an information packet. In the HA briefing, the family receives a broad description of how the program works, family and owner responsibilities, and areas where the family can lease a unit. The information packet reinforces the briefing, and supplies more detailed information to the family. The final rule modifies requirements on the briefing and information packet. (§ 982.301)

In the final rule, several elements are removed from the listing of items that must be covered in the oral briefing, but are included in the written information packet—a description of the housing quality standards (HQS), and of factors the family should consider in renting a unit.

The final rule drops a proposed provision that would have required the HA to give prospective landlords information about the family's rental history or about drug-trafficking by family members. Under the final rule, the HA has the choice whether to furnish this type of information to landlords. (§ 982.307(b)(2)) The HA is only required to tell a prospective Section 8 landlord (from information in HA records) the family's current address, and the family's current and prior landlord. The HA policy on furnishing other information about the family to landlords must be stated in the HA administrative plan. (§ 982.54(d)(7)) The HA policy must be stated in the information packet for the family. (§ 982.301(b)(8))

The oral briefing and information packet must explain where the family may lease a unit, inside and outside the HA jurisdiction. (§ 982.301(a)(1)(iii) and § 982.301(b)(5)) If the family qualifies to move outside the HA jurisdiction under portability, the briefing and information packet must explain how portability works. (§ 982.301(a)(2) and § 982.301(b)(5))

The final rule adds a new provision that if the jurisdiction includes any high poverty census tract, and if the family

is living in such a census tract, the HA briefing must explain the advantages of moving to an area that does not have a concentration of poor families, such as improved employment, educational opportunities and decreased dropout rates. In the briefing, the HA may not discourage the family from choosing to live anywhere in the HA jurisdiction, or outside the HA jurisdiction under portability procedures. (§ 982.301(a)(3))

The final rule provides that the briefing packet must include a copy of the HUD prescribed "lease addendum" (required lease language), and the form of request for lease approval. (§ 982.301(b) (6) and (7))

The proposed rule would have required that the HA supply the family certain types of information on prevention of lead-based paint poisoning. The final rule provides that the HA must give the family the HUD-prescribed lead-based paint brochure. (§ 982.301(b)(11))

## 2. Information About Landlords

The proposed rule would have provided that if requested by the family, the HA would give the family available information about prospective landlords. Comments state that the HA should provide information about "units", rather than about prospective "landlords". Other comments state that the HA should not be allowed to release landlord information without the landlord's consent, or that HAs may be accused of steering families to landlords in particular areas. HUD has not followed these suggestions.

The final rule requires that the briefing packet include a list of landlords or other parties known to the HA who may be willing to lease a unit to the family, or help the family find a unit. (§ 982.301(b)(13)) The list may include owners or rental agents for specific properties or units known to the HA (for example, an apartment house with units rented to other program participants), or entities that may provide access to numerous units and locations in the local market, such as real estate agents, rental agents or social service agencies with listings of possible rental openings. The HA may or may not provide a listing of specific "units". The name of a single listing agent may provide access to many specific units in the local housing market.

In providing listings to assist a family, the HA is subject to general program requirements designed to protect the family's practical and legal freedom to search for an available unit. The HA may not discourage the family from choosing to live anywhere in the HA jurisdiction, or outside the HA

jurisdiction under portability procedures. (§ 982.301(a)(2)). The HA may not directly or indirectly reduce the family's opportunity to select among available units. (§ 982.353(f)) These general requirements apply both to the provision of landlord and agent listings to the family, and to other aspects of program administration. The HA may not design such lists in order to steer families to particular areas, thereby reducing a family's opportunity to select available units, or discouraging the family from living anywhere the family may choose.

At the same time, the rule leaves the HA broad discretion and authority to provide information to families in a practical and helpful way. The HA is not required to provide a listing of every possible landlord known to the HA. The rule does not state that the HA must provide any specific number of listings.

Comments suggest that the HA should be required to give the tenant a list of owners that are barred from participation, so families don't waste time. HUD agrees that such information might be helpful in some markets, or for some owners or units. However, HUD is not persuaded that this practice will be universally beneficial, or should be mandated by federal regulation. In many cases, it may be difficult for tenants to correlate lists of barred "owners" with listings of units available for rental in the local market.

## 3. Information for Disabled Persons

The proposed rule would have required that if a member of the family were disabled, the HA must have provided information about current "available" accessible units known to the HA. Comments state that the HA does not know whether housing is available. Comments also state that the HA should be required to give the family information available to the HA of locations and contacts for accessible housing or other assistance.

HUD agrees that HAs can only furnish available information on possible openings in accessible units. The final rule provides that at the request of a family that includes a disabled person the HA must provide a current listing of accessible units "known to the HA that may be available" for rental to program participants. (§ 982.301(b)(14) (emphasis supplied))

Comments suggest that the oral briefing should use appropriate procedures for communication with the disabled. Existing HUD regulations at 24 CFR part 8 prohibit discrimination against disabled persons in administration of HUD assistance programs. Section 8.6 of these

regulations requires recipients to take appropriate steps to assure effective communication with applicants and beneficiaries. The present rule is revised by adding a reference to these requirements. (§ 982.301(a)(4))

## B. Giving an Owner Information About a Family

The proposed rule would have provided that the HA must give a prospective owner information in the HA's possession about rental history or drug-trafficking by members of the family.

Some comments agree that HUD should require or allow the HA to release information about the family to a prospective Section 8 owner. The comments claim that providing the information to owners will improve relations between the HA and landlords. Comments state that the HA should both inform the family about the owner, and the owner about the family.

Other comments contend that the HA should not act as a clearinghouse for tenant information. HUD should not require or allow an HA to give landlords information about prospective tenants. Determination of tenant suitability is the responsibility of the owner. The HA should not be involved in owner screening of tenants. The owner can check tenant references. The proposed and final rule provide that the HA must tell the owner that the HA has not screened the family for suitability, and that such screening is the owner's responsibility. Comments agree that the HA should so inform the owner.

The rule is revised to add a new provision stating that:

"Owners are permitted and encouraged to screen families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

- (1) Payment of rent and utility bills;
- (2) Caring for a unit and premises;
- (3) Respecting the rights of others to the peaceful enjoyment of their housing;
- (4) Drug-related criminal activity or other criminal activity that is a threat to the life, safety or property of others; and
- (5) Compliance with other essential conditions of tenancy." (§ 982.307(a)(2))

Comments state that the release of information about a family to prospective owners may expose the HA to potential legal liability, or violate confidentiality requirements under federal or State law. The obligation for the HA to give landlords information on prospective tenants adds a new bureaucratic requirement, and forces an HA to maintain rental or behavioral data on individual tenants. Comments note that HA release of tenant information

may block the family's effort to find suitable housing.

Comments ask HUD to clarify what types of "rental history" must be communicated to a prospective landlord: Whether this term means rent-paying history, and whether the requirement is limited to bona fide file information or first hand information.

Other comments note HA files may contain hearsay, or inaccurate or disputed information about the family. Comments state that the HA should not release tenant information unless the HA obtained the information as the family's landlord, or has other direct knowledge that the information is truthful. Comments state that the HA should not give out information without a release from the tenant, or that the family should have the right to challenge information in the HA file. HA communication gives legitimacy to allegations of a prior landlord. Comments also suggest that landlords don't need information from the HA since landlords can check references, and criminal convictions are a matter of public record.

The final rule provides that when a family wants to lease a dwelling unit, the HA "may offer" an owner HA information about family tenancy history or drug trafficking. (§ 982.307(b)(2)) The rule does not require the HA to release the information.

However, the final rule provides that the HA must give the owner:

- The family's current address, as shown in the HA records.
- The name and address (if known to the HA) of the landlord at the family's current and prior address. (§ 982.307(b)(1))

The final rule requires the information packet for a newly selected family to include a statement of the HA policy on providing information to owners. (§ 982.301(b)(8)) The HA must give the same types of information to all families and to all owners. (§ 982.307(b)(3))

Under the final rule, the policy on release of family information to prospective landlords rests in the hands of the HA, the local agency charged with administration of the tenant-based program. The final rule merely confirms that HAs "may" offer the owner information about the family in the HA's possession, thus confirming that there is no federal bar to release of tenant information. However, the choice to exercise this option is the election of the HA. Some HAs will wish to release available information on program families, to enhance general owner

confidence and willingness to lease units under the tenant-based programs. Other HAs will elect to avoid the legal exposure and potential administrative problems in processing or releasing tenant information.

In some States, there may be State or local laws affecting release of tenant information to owners. Such laws may require the release of such information, or may restrict the release of the information. The federal regulation is not intended to pre-empt the operation of such State or local laws.

If the HA wants to release tenant information, the HA must adopt a policy on providing information to owners. The release of information by the HA may not be left to casual ad hoc decisions of HA officials, but must be based on an explicit HA policy.

#### *C. Requesting HA Approval To Lease a Unit*

After a family is selected, the HA issues a certificate or voucher to the family. The family may search for a unit. The family must get HA approval to lease a unit with assistance in the program. The final rule restates and clarifies the procedure for requesting HA approval. (§ 982.302; § 982.303; § 982.305; § 982.306)

The proposed rule would have provided that the family requested approval to rent the unit, but did not refer to a "request for lease approval". The old program rules provided that a family submitted a request for lease approval to the HA. Public comments state the rule should keep the requirement to submit a request for lease approval. Comments note that a request for lease approval is signed by the landlord, confirms the landlord's agreement to rent the unit, and gives basic information on terms of the proposed leasing. The form of the request for lease approval facilitates review by the HA.

The final rule provides that the family must submit a request for lease approval, and a copy of the proposed lease, during the term of the certificate or voucher. (§ 982.302(c)) The HA has the discretion to permit a family to submit more than one request at a time. (§ 982.302(b)) The final rule also states that the HA may specify the procedure for requesting approval to lease a unit, and that the family must submit the request "in the form and manner required by the HA". (§ 982.302(d))

#### *D. Term of Certificate or Voucher*

The family must request lease approval during the term of the certificate or voucher issued by the HA. Extension or suspension of the term

gives the family more time to find a unit and request HA approval. (§ 982.302; § 982.303)

Comments offer different recommendations on the extent of HA discretion to limit the term of a certificate or voucher. Some comments stress that an HA should be required to give a family ample time to use a certificate or voucher. Other comments state that HAs should have broad discretion to set local policies on the certificate or voucher term, and concerning any extension or suspension of the term. Comments note that the administrative plan should include the HA standards for granting extensions of the term.

Comments assert that the initial term should be longer than 60 days, or that the HA should be required to extend the initial term. Some comments state that families need more time to find housing, or to find units in non-minority or non-poverty neighborhoods. A comment recommends that the certificate or voucher should have an initial 120 day term. The comment states that the HA should be required to grant further extension if the family has made reasonable efforts to find housing during the initial term.

Other comments state that HUD should retain the maximum 120 day term (60 days plus an extension of up to 60 days) as under the old rule. 120 days is a reasonable time to find a unit. Comments also state that allowing HA discretion to set longer terms allows too much variation between local HA programs.

Some comments state that the rules should require the HA to suspend (toll) running of the term when the family has asked the HA for approval to lease a unit, and is waiting for HA action on the family's request. Unless the HA grants a suspension, the term continues to run, and the family may be discouraged from trying to lease a unit in non-minority or non-poverty areas. The family cannot control the time used by the HA in deciding to approve or disapprove the unit. The family may not have time to find another unit if the original unit is disapproved. Other comments suggest that suspension is unfair to other applicants waiting for housing.

Under previous HUD rules, the initial term of a certificate or voucher was a minimum of 60 days. At its discretion, the HA could extend the initial term up to a maximum of 120 days from the beginning of the initial term. This basic 60 day to 120 day pattern is continued in the final rule. The proposed rule did not set any maximum term. The HA could decide whether to grant extensions, and the length of any

extension. The final rule provides, as under the old rule, that the initial term plus any extensions may not exceed a total of 120 days. (§ 982.303(b)(1))

The family may ask the HA to extend the term up to the 120 maximum as a reasonable accommodation for a disabled person. (§ 982.303(b)(2)) If the HA believes that a longer time is necessary for this purpose in a special case, HUD will consider a request for regulatory waiver of the 120 day maximum.

At its discretion, in accordance with HA policy as described in the administrative plan, an HA may grant a "suspension" (tolling) of the certificate or voucher term if the family submits a request for lease approval during the term of a certificate or voucher. (§ 982.303(c)) "Suspension" means stopping the clock on the term of a family's voucher or certificate after the family submits a request for lease approval. (§ 982.4; § 982.54(d)(2)) The final rule permits the HA to grant a suspension for "any part of" the period running from the family's request for lease approval up to the time when the HA approves or denies the request. (§ 982.303(c))

The rule requires the HA to establish in the administrative plan a policy on when and whether extensions or suspension of the term may be granted, including how the HA decides whether to grant extensions or suspensions, and the length of any extension or suspension. (§ 982.54(d)(2))

#### E. HA Approval To Lease a Unit

The HA must determine that a unit meets program requirements. Before approving rental of a unit with assistance under the program, the HA must determine that:

- The unit is eligible housing;
- HA inspection shows that condition of the unit satisfies the housing quality standards (HQS);
- The lease is approvable and includes the "lease addendum" language required by HUD;
- The rent to owner is reasonable; and
- If the unit will be assisted under the certificate program, the total of contract rent plus any allowance for tenant-paid utilities does not exceed the FMR/exception rent limit. (§ 982.305(a)) The HA may not execute a HAP contract until all these requirements are satisfied.

The rule provides that all of the following actions must be completed before the beginning of the lease term:

- The HA has inspected the unit, and determined that the unit satisfies the HQS;

- The landlord and the tenant have executed the lease; and

- The HA has approved leasing of the unit in accordance with HUD requirements. (§ 982.305(b))

A public comment states that the rule should allow an HA to execute the HAP contract up to 60 days after commencement of the lease. Another comment argues that execution of the HAP contract before the HA has approved the unit would force the HA to pay rent to the owner before the HA has approved the unit and the lease. The final rule is consistent with the recommendations in these comments.

The final rule requires that the HAP contract must be executed no later than 60 days from the beginning of the lease term. (§ 982.305(c)(1)) However, the HA must use "best efforts" to execute the HAP contract before the beginning of the lease term. The HA may not approve the unit or execute the HAP contract until the HA has determined that the unit and lease meet all program requirements. (§ 982.305(a))

Comments object to the requirement that the lease must be executed before the beginning of the lease term. The final rule retains this requirement.

From the beginning of the lease term, the family's tenancy must be subject to the statutory and basic tenancy requirements stated in the required lease addendum. By execution of the lease, containing the required provisions, the lease requirements are contractually binding on the owner and the tenant. The lease makes explicit the intention of the family and the owner to establish a tenancy in accordance with requirements of the tenant-based programs.

Lease execution before commencement of the lease term is not difficult. Each family is given a copy of the lease addendum in the information packet. In general, owners are also familiar with this requirement. The requirement to execute the lease before the commencement of the term is also consistent with general practice in the private rental market.

The HA may not approve the unit or execute the HAP contract, until the HA determines that the tenancy meets all program requirements (as listed in the rule). (§ 982.305(a)) The HA must make "best efforts" to execute the HAP contract before the beginning of the lease term. (§ 982.305(c)(1)) The HAP contract must be executed within a maximum of 60 calendar days from the beginning of the lease term. (§ 982.305(c)(1)) In accordance with normal administrative fee procedures, the HA receives its administrative fee

for each whole month the unit is under lease.

The rule is revised to clarify what happens if the HAP contract is not executed before the beginning of the lease term. The final rule provides that:

- The HA may not pay any housing assistance payment to the owner until the HAP contract has been executed. (§ 982.305(c)(2))
- If the HAP contract is executed during the first 60 days of the lease term, the HA 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). (§ 982.305(c)(3))
- Any HAP contract executed after the 60 days period is void, and the HA may not pay any housing assistance payment to the owner. (§ 982.305(c)(4))

Comments recommend that the rule should require the HA to approve the unit and lease in a specific short period from submission of the family request for lease approval. A period of 7 days is suggested. The recommendation to prescribe a rigid uniform period from family submission to HA approval is not adopted. The imposition of a uniform deadline is not practical for HAs operating in different housing markets, and as applied to the special circumstances of particular cases—for example, time needed so that an owner can correct HQS deficiencies. As noted above, however, the HA must execute the HAP contract within 60 days after commencement of the tenancy.

#### F. HA Disapproval of Owner

##### 1. Mandatory Denial

The rule requires that the HA *must not approve* rental of a unit from an owner if the owner is subject to certain federal sanctions (debarment, suspension or denial of participation under 24 CFR part 24). (§ 982.306(a)) The HA may or may not know that an owner is subject to these sanctions. The final rule therefore specifies that the HA's obligation to reject the owner only applies if the HA has been informed of this fact by HUD or some other source.

The proposed rule would also have provided that the HA could never approve rental from the owner if HUD had initiated an enforcement action under the Fair Housing Act. The final rule is revised to provide that the HA must not approve rental from the owner *if so directed by HUD* when the owner has been the subject of equal opportunity enforcement proceedings.

(§ 982.306(b)) Automatic disapproval of owners who have committed fair housing violations might operate to deny housing opportunities for low-income or minority families. Such automatic denial may be inconsistent with fair housing policies. The appropriate remedy should therefore be determined by HUD in the circumstances of the particular case.

In addition, the final rule broadens the description of the proceedings for which such rejection should apply. The HA must disapprove the owner (when directed by HUD) if:

—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.

—A court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements. (§ 982.306(b))

The new provisions cover fair housing enforcement actions:

—By administrative or judicial action.

—For violation of the Fair Housing Act or other equal opportunity requirements.

Comments suggest that the HA should only be required to reject an owner because of complaints referred by the HA to a fair housing enforcement agency. This comment is not adopted. Rejection of an owner supports federal fair housing statutes, regardless of whether the complaint originated with the HA itself.

## 2. Discretionary Denial

The rule provides that the HA has administrative discretion to deny approval to lease a unit from an owner in certain other specified cases. (§ 982.306(c))

The proposed rule would have provided that the HA could deny approval if the owner had not paid State or local real property taxes. Comments both support and object to allowing or requiring the HA to refuse approval of an assisted tenancy on this ground. The final rule permits the HA to deny approval if the owner has not paid State or local real estate taxes, fines or assessments. (§ 982.306(c)(6)) The rule does not direct the HA to exercise this authority. Each local HA has administrative discretion whether or not to reject owner participation for this reason. By rejecting participation of owners who have not paid local levies, the HA gives the locality leverage for collection of delinquent accounts. Under the final rule, the HA may

exercise this discretion for non-payment of local fines or assessments, in addition to local real property taxes.

The proposed rule would have provided that the HA could deny approval to lease a unit from an owner who had committed fraud or made any false statement in connection with any federal housing program. The final rule amends and broadens this language to provide that the HA may deny approval if the owner has committed "fraud, bribery or any other corrupt or criminal act" in connection with a federal housing program. (§ 982.306(c)(2))

The revision protects the integrity and purpose of federal housing assistance. The revision is intended to make clear that the HA has broad authority to reject participation of a Section 8 owner who has engaged in bribery or any other corrupt or criminal activity related to a federal housing program. The HA may decline to accept an owner, regardless of whether the owner's crime meets the technical indicia of "fraud" as defined by federal or State law. In a parallel revision, the rule also provides that the HA may deny or terminate assistance for a family that has committed corrupt or criminal acts in a federal housing program. (§ 982.551(k); § 982.552(b)(5))

The rule provides that the HA may reject an owner who has engaged in "drug-trafficking". (§ 982.306(c)(3)) As defined in the rule (§ 982.4), this term refers to commercial drug-dealing (manufacture, sale or distribution of narcotics), but does not cover illegal drug use. Comments ask why the rule only allows the HA to reject an owner who engages in drug-trafficking, but not for any other drug-related criminal activity. HUD believes that the rule is appropriately targeted at allowing the HA to bar drug dealing owners from its program.

The HA may reject an owner with a "history or practice" of violating Section 8 HQS or applicable housing standards under other federal housing programs. (§ 982.306(c)(4)) Comments mistakenly assert that the rule would require the HA to reject a unit if any owner has a history of minor HQS violation. In fact, the rule leaves the decision whether to reject an owner to the HA's administrative discretion. Comments recommend that HUD should define "history or practice". HUD believes that this is a sufficient description of the case to be covered. The individual HA may more precisely focus on types of owner behavior that should be reason for rejecting owner participation.

The rule specifies that for purpose of the provisions on HA disapproval of an owner, the term "owner" includes a

"principal or other interested party". (§ 982.306(e)) Rental real estate is often held by a legal entity such as a limited partnership or corporation, rather than an individual. A real estate investor may have an interest in various properties held in the name of different legal entities, or may have an interest in various partnerships or enterprises. The rule clarifies that the "owner" is not merely the nominal entity that holds legal title to the property to be rented, but also covers other persons with an actual interest in the property. In applying the authority for rejection of an "owner" in specific cases, the HA may penetrate the veil of the form of ownership. The HA may deny approval to rent a unit from an entity in which the principal or other interested parties have engaged in activities that are grounds for denial. For example, the HA may deny approval to rent from a partnership where a general or limited partner has committed fraud in connection with a federal housing program.

Comments recommend that HUD should require disclosure of any individual or corporation with an ownership interest of more than 10 percent. The HA may require a prospective owner to disclose ownership information, so that the HA can determine if the owner should be rejected or approved. However, HUD will not direct HAs to require disclosure, and will not regulate the nature or form of owner disclosure.

Comments recommend that HUD should allow an HA to reject an owner who has used foul language or threats against HA staff or tenants. This comment is not adopted.

## 3. HA Policy

Comments suggest that an HA should not have discretion to decide the criteria for disapproving owners. The HA should only determine whether an owner has committed an action that is grounds for disapproval. Comments also recommend that the rule should require an HA to use the same criteria for approval or disapproval of all owners. Comments state that HUD should only permit disapproval based on reliable and credible evidence, and that the HA should only be allowed to disapprove an owner because of "recent" owner action.

The final rule provides that the HA administrative plan must include the HA policies on disapproval of owners. (§ 982.54(d)(8)) Since HUD has eliminated the requirement for HUD approval of the administrative plan, the HA policies on owner approval are not routinely submitted for HUD review or

approval. (Of course, HA administrative policy and practice are subject to HUD audit, review and required revision.)

HAs may only reject owners for any of the grounds listed in the rule. However, HAs retain broad discretion in deciding whether and how to exercise the authority to reject owners for any of the allowable discretionary grounds. The HA may determine the practicality and benefit of rejecting owners for such grounds, in the locality, and as applied to the circumstances of each individual case.

The decision to reject the owner rests in the discretion of the HA. HUD will not require the HA to establish any special type of process or evidentiary standard. HUD believes that the imposition of such requirements would discourage HAs from rejecting owners for good and substantial reasons, such as the owner's practice of renting units that violate local code. The rule confirms explicitly that owners do not have a right to participate in the program. (§ 982.306(d)) Therefore the rejection of an owner's participation does not affect any owner right or property interest. The HA may exercise its discretion to reject an owner in accordance with local policy, and available information.

### G. Tenancy

#### 1. Tenant Definition

The proposed rule would have added a new definition of the term "tenant". The proposed definition would have provided that a tenant was the "adult" member of the assisted family who executed the lease as lessee of the dwelling unit. Comments state that the new definition is helpful, and approve adding this defined term.

The final rule revised the proposed definition by removing the provision that the tenant must be an "adult" member of the family. In the final rule, the term "tenant" is defined as "the person or persons (other than a live-in-aide) who executes the lease as lessee of the dwelling unit". (§ 982.4) The rule text clarifies that a tenant must have legal capacity to enter into a lease under State and local law. (§ 982.308(a)).

#### 2. Approval of Lease

Any new lease or revision must be approved by the HA. Before approval, the HA must determine that the lease meets program requirements under the rule. (§ 982.308(b))

A lease must be executed by the tenant and the owner before the beginning of the lease term. (§ 982.305(b)(2)) The lease must also be approved by the HA before the

beginning of the term. (§ 982.305(b)(3)) Any new lease or revision must be approved in advance by the HA, and must comply with program requirements. (§ 982.308(b); § 982.309(e)(1))

The rule provides that if the tenant and the owner enter into a new lease or revision, the HA and owner must enter into a new HAP contract to subsidize the tenancy under the new lease or revision. (§ 982.309(e)(1)) Comments recommend eliminating the requirement for execution of a new HAP for this purpose. This recommendation is not adopted. The rule continues to require the use of a simple and uniform process for commencement of the assisted tenancy—by execution of a lease and HAP contract in each case. The HAP contract expresses the HA's agreement to subsidize the tenancy under the new or revised lease.

#### 3. Contents of Lease

The proposed rule would have required the lease to include word-for-word all provisions required by HUD, and barred any provisions prohibited by HUD. The lease language required by HUD is called the "lease addendum". (§ 982.308(c)(1)) The final rule provides that the lease must include word-for-word all provisions required by HUD. (§ 982.308(c)(2)) The rule provides that if there is any conflict between the provisions required by HUD (lease addendum) and other provisions of the lease, the provisions required by HUD shall control. (§ 982.308(c)(3))

The lease addendum must state that certain types of lease provisions are prohibited. (§ 982.308(d)) The statement of prohibited lease provisions for the certificate and voucher programs in the proposed rule is the same as language previously used in the old voucher rule. This language is similar to, but more simply and clearly stated, than the description of prohibited lease provisions in the old certificate rule. A comment recommends that HUD should use the version of prohibited lease provisions in the old certificate rule. This comment is not adopted.

In all cases, the assisted lease must include the *verbatim* language of the lease addendum. An HA may develop a model program lease that may be offered for use by families and owners. A model lease must include the language of the lease addendum, and must comply with program requirements. However, the new rule prohibits the HA from requiring families and owners to use a model program lease prescribed by the HA. (§ 982.308(c)(2))

HA comments object to the prohibition against requiring use of an

HA model lease. Comments state that use of a model lease saves an HA the cost of reviewing leases to assure compliance with required lease provisions. HUD believes that mandating use of a model lease may unduly restrict family choice of available housing. Owners may refuse to execute program leases in the form of the HA-prescribed model lease rather than using a form of lease familiar to the owner.

Comments recommend that the HA should be permitted to disapprove a lease that does not comply with State or local law. This comment is adopted. The final rule provides that the HA may review the proposed lease to determine if the lease complies with State or local law, and may decline to approve the lease if it does not comply with State or local law. (§ 982.308(f)) It should be emphasized, however, that the federal rule does not *require* that the HA review the lease for compliance with State or local law. The decision to undertake such review, or to decline lease approval for this reason lies in the HA's discretion.

#### 4. Term of Tenancy

The rule provides that the initial term of the lease must be for at least one year, and must provide for "automatic renewal" after the initial term. The lease may renew by an automatic indefinite extension or by automatic extension for successive definite terms (for example, month-to-month or year-to-year). (§ 982.309(b)(1) and (2))

The lease terminates if any of the following occurs:

- The owner terminates the lease.
- The tenant terminates the lease.
- The owner and the tenant agree to terminate the lease.
- The HA terminates the HAP contract.
- The HA terminates assistance for the family. (§ 982.309(b)(3))

The term of the lease and the HAP contract are the same. The term of the HAP contract follows the term of the lease. (§ 982.309(a)(1)) The lease ends when the HAP contract ends. (§ 982.309(b)(2)(iv)) The HAP contract ends when the lease ends. (§ 982.309(a)(2))

Comments approve the clarification that the initial lease term is one year. Comments also approve the new language on automatic extension of the initial year term, noting that the new regulation clears up confusion under the prior rule. (§ 982.309(b)(1) and (2))

The owner may offer the family a new lease, for a term beginning at any time after the initial term. The owner must give the tenant at least 60 days written

notice of the offer. Comments recommend that the owner should also be required to send the HA a copy of the offer. The comment is adopted. (§ 982.309(e)(2))

Rent to the owner and the family share of rent may change during the assisted lease. The rule does not require the execution of a new lease or HAP contract for a change in family share in accordance with HUD requirements, or a change in rent to owner in accordance with the HA approved lease.

#### 5. Termination of Tenancy

The rule and the statute provide that an owner may terminate an assisted tenancy for serious or repeated violation of the lease, violation of tenancy obligations under federal, State or local law, or other good cause. (42 U.S.C. 1437f(d)(1)(B)(ii); § 982.310) The final rule provides that the owner may terminate tenancy for these grounds "during the term of the lease".

(§ 982.310(a)) The federal requirements for termination of tenancy only apply during the term of the assisted lease, but do not apply after a termination of the assisted lease—for example, where the lease has terminated automatically because the HAP contract has terminated.

#### Other Good Cause

As under the old rule, the rule provides that "other good cause" for termination of tenancy by the owner may include, but is not limited to, any of the following examples:

- Failure by the family to accept the offer of a new lease or revision;
- 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;
- The owner's desire to use the unit for personal or family use; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to lease the unit at a higher rental). (§ 982.310(d))

Comments recommend that HUD give more definition of "other good cause", and suggest that the existing provisions have been used as "legal loopholes" for owner eviction of tenants. The recommendation is not adopted. The statute permits eviction after the first year for "other good cause", as well as for family violation of the lease. Eviction for good cause is not a "loophole", as asserted by the comment, but is a ground for eviction specifically provided in the statute. If an owner seeks to evict for this reason, the existence or non-existence of cause is

determined by the court in the owner's eviction action. The good cause provisions in the present rule are largely the same as provisions promulgated by the Department in 1984 for the certificate program (and subsequently incorporated in regulations for the voucher program). In the preamble to the 1984 rule, the Department noted that:

"a comprehensive regulatory definition of good cause in the Section 8 Existing Housing Program (i.e., the certificate program) is neither possible or desirable. The good cause category should remain open to case by case determination by the courts. It is a prime virtue of this statutory category that it permits termination by owner in types of cases which cannot be readily foreseen." (49 FR 12233, March 29, 1984)

The rule recites key "examples" of cases that may be good cause, but explicitly states that "other good cause" is not limited to the listed examples. In the 1984 rule, HUD stated that:

"The good cause concept should be flexible and open to application in concrete cases, but there is a critical need to provide explicit regulatory assurance to prospective section 8 owners that legitimate owner concerns will be recognized as grounds for termination of tenancy \* \* \*. (T)his assurance may be essential to promote broad participation by owners." (Id.)

#### Criminal Activity

The rule provides that the owner may evict a tenant for any criminal action that threatens persons who reside in the "premises" or the "immediate vicinity". (§ 982.310(c)) In the rule, "premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds. (§ 982.4) Comments support allowing eviction because of threats to persons who reside in the vicinity. However, comments also recommend that HUD should allow the owner to evict because of criminal activity that is a threat to the owner's representative or staff.

An owner may only terminate a tenancy in Section 8 existing housing for the grounds specified in the law. (42 U.S.C. 1437f(d)(1)(B)) The rule implements statutory provisions which explicitly confirm that the owner may evict a tenant for criminal activity that is a threat to residents. The statute does not refer to criminal activity that is a threat to other persons, who do not reside in the housing or the vicinity, and does not refer to representatives of the owner. However, threats or harm to owner representatives by the assisted household or its guests may be ground for eviction if the threatening activity constitutes a serious or repeated lease violation or is "other good cause" for eviction of the tenant.

The rule permits an owner to evict the tenant for drug-related criminal activity "on or near" the premises. (§ 982.310(c)(3)) Comments state that the program should not assist persons who engage in drug-trafficking, whether the activity occurs on or off the premises. The law provides that the owner may terminate tenancy because of any drug-related criminal activity "on or near" the assisted premises. (42 U.S.C. 1437f(d)(1)(B)(iii)) The language of the HUD rule follows the eviction standard prescribed in the law.

During the term of an assisted lease, an owner may not evict a tenant for drug crime unless the crime takes place "on or near" the housing (unless the behavior is a serious or repeated lease violation or is otherwise "other good cause" for eviction of the tenant). However, the HA may terminate program assistance for drug-related criminal activity or violent criminal activity by a family member, regardless of where the criminal activity takes place. (§ 982.553) HUD has explained the reason for this policy:

"The Department has not limited the proscribed (drug-related or violent criminal) activities under this rule to activities carried out on or near the premises. Section 8 certificates and housing vouchers are a very mobile form of housing assistance. The holder can lease suitable housing with Federal subsidy assistance anywhere in the PHA's jurisdiction, in the metropolitan area, or in a contiguous metropolitan area. If a PHA were (only) permitted to terminate assistance for activities on or near the assisted premises, the deterrent effect of this policy would be substantially diminished because the family could lease housing outside the area where the family member engages in the proscribed activities. Furthermore, if the rule were limited to activities engaged in on or near the premises which are being leased with Section 8 assistance, the rule would not authorize a PHA to deny Section 8 assistance to a former public housing tenant evicted for drug-dealing in public housing \* \* \*." (55 FR 28538, 28540, July 11, 1990)

The lease terminates when the HA terminates assistance for the family. (§ 982.309(b)(3)(v))

Under the law and this rule, the owner may evict for drug crime "on or near" the premises. Comments suggest that the rule should cover crime in an adjoining street, alley or other public right of way. In this rule, HUD tracks the statutory standard, and does not attempt to further define when a crime location is considered "near" the assisted project or building. In general, this standard would cover drug crime in a street or other right of way that adjoins the project or building where a Section 8 unit is located. A landlord-tenant court

can apply the statutory standard to the circumstances of a particular case.

#### 6. Nature of Assisted Tenancy

Comments claim that the rule provides for a perpetual lease, and discourages owner participation. Comments state that the rule prohibits the owner from selling the assisted unit, and allows the HA to reduce owner rents at will. Comments state that rule should allow termination of tenancy without cause by the family or the owner after the first year of the lease term. Comments assert that the owner is locked in, whereas the family can terminate the lease on 60 days notice at the end of the first year. By contrast, other comments claim that the rule undermines existing protections for the tenant.

In fact, the rule does not undermine existing protections for the tenant or the owner. Rather, HUD believes that the rule reflects a reasonable balance between the interest of the assisted tenant and the owner within the context of the existing law. On the one hand, the lease protects the tenant against arbitrary and ungrounded termination by the owner. On the other hand, the owner is not locked in, but may terminate the tenancy for lease violation or other good cause.

After the initial year, the family may terminate the tenancy on notice to the owner. After the initial year, the owner may terminate the tenancy for other good cause—specifically including a “business or economic reason” for termination of the tenancy. The rule does not, as claimed by the comments, prohibit the owner from selling the unit. The rule specifically states that a business reason for termination after the initial year may include “sale of the property”. (§ 982.310(d)(1)(iv))

#### 7. Notice by Owner

##### *Notice of Grounds for Termination*

By law, the owner must give the tenant a written notice that specifies the grounds for termination of tenancy. (42 U.S.C. 1437f(d)(1)(B)(iv))

The proposed rule would have provided that the owner’s notice of grounds for termination could have been combined with and run concurrently with any notices required under State or local law. Comments suggest that the owner should be required to give the notice of grounds with owner’s notice to vacate, not later with the summons, complaint or other pleading. HUD should require a minimum notice period before commencement of the eviction action. The comment notes that advance notice

of eviction allows time for the tenant to negotiate a resolution, and gives an opportunity for the HA to protect both the tenant and the HA interest.

The final rule clarifies that the owner must give notice of the grounds for eviction at or before commencement of the eviction action. (§ 982.310(e)(1)(i)) The notice may be included in, or may be combined with, any other owner eviction notice to the tenant. (§ 982.310(e)(1)(ii)) Such other 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. (§ 982.310(e)(2)(i))

Comments recommend that the rule require notice with sufficient specificity to prepare a defense. The rule does not specify the form or contents of the statutory notice. The rule also does not prescribe the point at which the notice must be given, so long as the owner gives notice of grounds at or before commencement of the eviction action.

Comments propose that the owner should be required to notify the HA at the same time as the tenant. The final rule provides that the owner must give the HA a copy of any owner eviction notice to the tenant. (§ 982.310(e)(2)(ii))

##### *Termination of HAP Contract—90 Days Notice*

The owner must give 90 days notice before a termination of a tenant-based HAP contract because of:

- Owner “opt-out”.
  - “Expiration” of the HAP contract.
- The owner must give written notice of the termination to the family, the HA and HUD. (42 U.S.C. 1437f(c)(9) and (10), § 982.455(b)(3))

The rule provides that expiration occurs in two cases:

- Automatic termination of the HAP contract. The proposed rule would have provided that the contract terminates automatically *three months* after the last housing assistance payment. The final rule now provides that the HAP contract terminates *six months* (180 calendar days) after the last housing assistance payment. (§ 982.455(a))
- A HUD determination to terminate the HAP contract because there is insufficient funding to support continued assistance for the family. “Opt-out” refers to owner termination of tenancy for a business or economic reason. (§ 982.455(b)(2)(ii); see 42 U.S.C. 1437f(c)(9))

On receiving the owner notice, the HUD field office must review the notice and consider whether there are additional actions which should be

taken to avoid the termination.

(§ 982.455(b)(4)(i)) The final rule adds a new provision clarifying that the owner may proceed with eviction whether HUD approves or disapproves, or fails to complete the required review of the owner notice before expiration of the 90 day review period. (§ 982.455(b)(4)(iv))

For a unit assisted under the certificate program, the proposed rule would have provided that when HUD received notice of an opt-out *or expiration*, HUD would have been required to offer the owner the opportunity to enter into a new HAP contract at the maximum rent allowed for a new program tenancy (subject to the FMR/exception rent limit and the reasonable rent limit). The final rule provides that HUD must offer a new HAP contract only when the owner gives notice of an opt-out, but not in the case of an expiration. (§ 982.455(b)(4)(ii)(B))

Comments recommend that the 90 days notice procedure should apply to a termination because an owner wants to use the unit for personal or family use. HUD should evaluate the lawfulness of the termination, and offer incentives for the owner to keep the unit in the program. This comment is not adopted. In the tenant-based programs, an “opt-out” only applies to an owner’s termination of tenancy for a business or economic reason.

Comments recommend that the requirement to give notice of grounds for eviction should not apply to an owner opt-out. This comment is not adopted. Owner’s 90 days opt-out notice must state the reasons for the termination, and will simultaneously satisfy the requirement to give notice of grounds for termination.

#### 8. Rent

##### *Nonpayment of Housing Assistance Payment*

The final rule provides that 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 HA. (§ 982.310(b)(1); § 982.451(c)(4)(iii)) The HA 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 HAP contract term, the owner may not terminate the tenancy of the family for nonpayment of this amount. (§ 982.310(b)(2))

##### *Application of Tenant Payments*

Comments recommend that the rule should specify how tenant payments are applied. The comments state that HUD

should require that tenant payments must first be applied to current rent, and that any excess should be first applied to other rent, and only then to other non-rent purposes. The comment is not adopted. HUD has no reason for such micromanagement of the Section 8 tenancy. HUD will leave such questions for resolution in accordance with the lease and local law.

#### 9. Owner Late Fee

As in the past, the rules do not include any federally-imposed limitation on owner charges of fees against the tenant for late payment of rent in accordance with the lease and State and local law. Comments recommend that the rule should limit owner late fees, should allow a grace period for late payment of rent, and should prohibit eviction for non-payment of late fees. The comments are not adopted.

HUD seeks to minimize interference in the relationship between landlords and assisted tenants in order to encourage owner participation in the program. In these programs, any regulation of tenant-paid late fees will be left to local policy, rather than encumbered by special HUD-imposed requirements that only apply to a subsidized tenancy. HUD also believes that owner assessment of late fees can perform a legitimate role as an encouragement for timely payment of the tenant share of rent.

The owner receives the total rent ("rent to owner") from two sources—the housing assistance payment portion from the HA, and the tenant portion from the family. Comments propose that HUD should prohibit charging late fees to the tenant for delays in the HA payment to the owner. The rule is revised to clarify the respective obligations of the HA and the family to the owner for payment of the HA and tenant portions of the rent, and for late fees for late payment by the HA or the tenant. The rule now provides that the tenant is not responsible for paying the HA share of the rent. This change will eliminate any basis for a late charge against the tenant for the HA share of the rent.

The final rule is revised to confirm that the HA must pay the owner promptly when the housing assistance payment is due in accordance with the HAP contract. (§ 982.451(c)(5)) In addition, the rule provides that if the HA fails to make timely payment, the HA "may be obligated" to pay a late fee "in accordance with State or local law". However, unless authorized by HUD, the HA may only use administrative fee income or administrative fee reserve for

payment of any such late fee. The HA may not use other Section 8 program receipts to pay a late fee to the owner.

#### 10. Termination and Notice by Family *Notice of Termination or Move*

The family may terminate a lease after the first year. The lease may not require the family to give the owner more than 60 days notice of the termination. (§ 982.309(d)(1))

The family must notify the HA before moving from the unit, and must give the HA a copy of any lease termination notice by the family to the owner. Failure to notify the HA before the family moves, or to give the HA a copy of the family's termination notice to the owner, is a breach of family obligations under the program. (§ 982.309(d)(2); § 982.309(f); § 982.551(g)(2))

#### *Family's Right To Terminate the Lease*

Comments express some confusion concerning the family's right to terminate the lease on notice to the owner (under the existing and the proposed rule). Some comments state that the family can move on one day or other short notice to the landlord. Other comments state that such short notice to landlords is unfair, discourages owner participation, and is inconsistent with standard leasing practice. Other comments assume that the tenant is required to give 60 days notice. Comments recommend that the family should be required to give the owner and the HA at least 30 days notice of termination. Comments state that the family should be required to give minimum notice to the owner in accordance with State and local law. Comments ask HUD to clarify the relation between termination by tenant notice, and the provisions for definite or indefinite extension of the initial lease term.

Some Section 8 lease requirements are prescribed by HUD. These requirements are contained in the required "lease addendum". Except for these program lease requirements, the terms of a Section 8 tenancy—like any private market tenancy—are governed by State law and the language of the particular lease executed by the tenant and the owner. The individual lease between a particular tenant and owner contains both the standard lease addendum and any other lease provisions agreed by the parties.

A tenant's right to terminate the lease, and the length of any required termination notice, depend on the terms of the lease. It is not true, as assumed by some comments, that the rule gives a Section 8 tenant the right to terminate

the tenancy during the first year, or that the tenant may terminate on one day or other short notice. In fact, there is nothing in the HUD rule or HUD-prescribed lease addendum permitting the tenant to terminate the lease during the first year of the lease term.

The Section 8 tenant may terminate the lease at any time after the first year. (§ 982.309(d)(1)) The program rule and lease addendum only provide that the lease may not require the tenant to give more than 60 days notice to the owner. In other respects, the particulars of the tenant's right to terminate the tenancy depend on local law and the terms of the tenant's lease.

In allowing the tenant to terminate after the first year (on no more than 60 days notice to the owner), the rule seeks to provide rough symmetry between the legal positions of the tenant and the owner. During the first year, an owner may not terminate the tenancy for "other good cause" unless the owner is evicting because of some action or non-action by the family. (§ 982.310(d)(2)) After the first year, the owner may terminate for any "other good cause" (including termination for a business or economic reason), not limited to termination because of action or non-action by the family. After the first year, the tenant may terminate the lease on notice to the owner.

#### 11. Security Deposit and Owner Claims When Family Moves

##### *Proposed Rule*

The owner may collect a security deposit from the family. As in the past, the proposed rule would have limited the amount of the security deposit. The proposed rule would have provided that the maximum security deposit was one month's rent.

The proposed rule would have provided that an owner could claim reimbursement from the HA for tenant damage and unpaid rent. The owner could collect a claim for one month's rent minus the maximum security deposit allowed by the HA. Under the proposed rule, the HA could therefore have eliminated owner reimbursement claims by permitting the owner to collect one month's rent as a security deposit.

##### *Comments*

Comments make various recommendations concerning the amount of the maximum security deposit. Some comments claim that a tenant can't afford to pay a one month deposit. Comments claim that the authorization to collect one month's rent as a security deposit forces the

family to lease a unit where the rent is low. Comments recommend that the security deposit should be one month's family contribution (generally 30 percent of family income).

Comments recommend allowing owner damage claims for up to two months rent. These comments assert that the damage claim protection is an important tool in persuading owners to rent to program families. Other comments suggest that it would be better to eliminate owner claims by increasing the maximum allowable security deposit. Family payment of the security deposit promotes family responsibility. The security deposit gives the tenant an incentive to minimize the owner's claim for damage or unpaid rent.

Comments recommend that HUD should direct HAs to comply with a federally-mandated timetable for processing of owner claims.

#### *Final Rule*

The final rule eliminates the right of the owner to claim reimbursement from the HA for damages or other amounts owed by the tenant under the lease. In this respect, the assisted tenancy will function more like an ordinary tenancy in the private market. The owner must look to the tenant for payment of any damages.

The final rule also eliminates the HUD-imposed limit on the amount of owner security deposits. The rule provides that the owner may collect a security deposit. (§ 982.313(a)) The HA is not required to set any limit on the owner security deposit. However, the HA has discretion to prohibit security deposits in excess of private market practice, or in excess of security deposits for the owner's unassisted units. (§ 982.313(b))

HUD believes that these changes tend to produce significant benefits.

- Elimination of unnecessary distinctions between the tenant-based program and a private market tenancy encourages broader participation by owners of units outside of areas of minority and high poverty concentration.
- The owner can no longer rely on the HA to pay tenant damages or unpaid rent. This change gives the owner a stronger motivation to screen assisted families the same as for unassisted private market tenants, and to check for unit damage during occupancy.
- This change in turn reinforces the incentive for a program family to take care of its unit before and during assisted occupancy.
- As suggested by comments, the need for the tenant to make a larger security

deposit from its own pocket creates a greater incentive to avoid damage to the unit, and owner claims against the security deposit.

- The elimination of owner claims relieves a major administrative burden. The old owner claim procedure forced HAs to determine whether a unit was damaged during occupancy, and whether any damage was the fault of the tenant. Under the old system, it was often hard for the HA to know who caused unit damage, and to sort out bona fide owner claims. Elimination of the old claim system eliminates the need to develop and operate a claims process that is fair to both families and owners.
- Since HAs will not pay owner claims, HAs will not deny or terminate assistance for failure to pay such claims. The change will tend to eliminate over time issues concerning denial or termination of a family's assistance for failure to reimburse amounts paid by the HA in owner claims on behalf of the families, including the need for repayment agreements or for hearings to determine whether an owner's claim was properly paid.
- Elimination of the old claim system saves both the amounts paid out in claims and the cost of administration.

#### 12. HA Payment After Family Move-Out

The rule provides that if a family moves out, the owner may keep the housing assistance payment for the month when the family moves out. The HA may not make any further payments. (§ 982.311(d)(1)) Comments state that HUD should allow vacancy payments for an additional month. The comments claim that an additional vacancy payment is an incentive for owner participation, and is needed to attract owners of higher quality units. Comments state that the elimination of vacancy claims for the month after move-out is unfair to participating owners.

The final rule provides, as proposed, that payments will not be made after the month of move-out. In the voucher program, the statute prohibits assistance payments after the month the unit is vacated. (42 U.S.C. 1437f(o)(4)) The provision of a vacancy payment absorbs funds that can be used to subsidize actual occupancies. Further, the use of subsidy payments for vacant units is an unnecessary departure from normal private market incentives and practice. In the tenant-based programs as in the private market, owners can charge a rent comparable to rents for a private unassisted rental. HUD is not persuaded that this additional incentive is

necessary or desirable to give program families a reasonable access to units in the rental market. The voucher program has functioned well without this incentive to owner participation.

#### 13. New Rule: Effect on Existing Tenancy

Comments ask how the changes under this rule affect existing tenancies, and HAP contracts, that were entered before the new rule. Comments ask if existing HAP contracts continue until termination, or if contracts must be amended at the next recertification. Comments express concern that the mode of implementing new regulatory requirements may cause administrative burden and expense.

Nothing in the rule overrides or impairs the terms of outstanding HAP contracts or leases entered into under the old regulations. The rights of owners and tenants are determined by the provisions of existing HAP contracts and leases. Owners and tenants are not required to enter into new HAP contracts and leases. Housing assistance payments will be made to the owners in accordance with the terms of the existing HAP contracts.

An HA may encourage owners and tenants to execute new leases and HAP contracts, in place of the existing contracts. However, the HA is not required to convert the old contracts, and may not force the owners and families to execute new contracts in accordance with the new requirements. Any HAP contract entered into after the effective date of the new rule must comply with requirements of the rule, and must be executed on the HUD-prescribed form. Similarly, the HA may not approve any new lease or revision unless the lease is in accordance with the new rule.

#### *H. Illegal Discrimination—HA Help for Family*

Several provisions of the proposed rule indicate that an HA must help a family that can't lease a unit because of illegal discrimination. Comments ask HUD to state what the HA should do to assist the family. The final rule requires that when a family claims that illegal discrimination prevents the family from leasing a suitable unit under the program, the HA must give the family information on how to fill out and file a housing discrimination complaint. (§ 982.304)

#### *I. When Housing Assistance Payments May Be Paid to Owner*

The proposed rule would have provided that the HA could only have made housing assistance payments to

the owner for a period the dwelling unit was leased to and occupied by the family. The final rule provides that:

- Housing assistance payments shall be payable 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. (§ 982.311(a))

The final rule also specifies that housing assistance payments terminate if:

- The lease terminates,
- The HAP contract terminates, or
- The HA terminates assistance for the family. (§ 982.311(c))

The final rule clarifies the principles governing continuation of payments to an owner during an eviction. The final rule provides that:

“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 HA 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 HA may continue such payments until the family moves from or is evicted from the unit.” (§ 982.311(b))

#### *J. Absence From Unit*

##### *Occupancy of Unit by Family*

Section 8 is intended to provide subsidy for a unit leased to and occupied by a low-income family. (See 42 U.S.C. 1437f) The family is obligated to use the assisted dwelling for residence by members of the family. (§ 982.551(h)(1)) The unit must be the family's only residence.

The proposed and final rule state that the HA administrative plan must include provisions governing how long the family may be absent from the dwelling unit, and under what circumstances. The final rule includes a more complete statement regarding HA policy on absence of the assisted family from the unit. (§ 982.312)

The proposed rule would not have set any HUD-prescribed limit on the length of family absence from the assisted unit. In the proposed rule HUD invited comment on whether the regulation should establish a specific federally defined outer limit on the time for which subsidy may be paid for an empty unit, for specific causes or for any cause.

##### *Absence From Unit: Comments*

Public comments contain a spectrum of recommendations on the degree of

HA discretion to establish policies on the length of family absence from an assisted unit:

- The HA should not have any right to terminate subsidy because of family absence.
- The HA should have total discretion to set policy on family absence.
- The HA should have discretion to set policy within limits established by HUD.
- HUD should set policy on family absence. The HA should not have discretion to determine the policy.

Some comments object to granting the HA any power to limit family absence. The HA should not be permitted to terminate assistance unless the family abandons the unit. The family should be treated like any renter. Comments also object to requiring that the family must only use the assisted unit for residence by the family. Comments state that this requirement burdens the family's freedom of movement and choice of occupation.

Comments state that the HA should not establish a fixed cut-off because of family absence from the units. The HA should consider the facts of each case, including the length and reason for absence, and the family's intention to return. The HA should not be allowed to terminate assistance where the resident is absent:

- Because of employment, such as absence of a migrant worker.
- Because the resident is in drug treatment or prison.
- Because the resident is in a nursing home.

Comments state that an HA's absence policy should distinguish between voluntary absence, as opposed to absence because the resident is being treated for a disability. Comments state that the HA should not terminate assistance unless the family fails to pay for rent or utilities. Comments claim that termination of assistance because of family absence discriminates against single person families, and violates the Constitutional right to travel.

Most comments agree that HAS should have broad discretion to establish local limits on absence from the unit. Some comments recommend that HAS should have complete flexibility to determine policies on absence from the unit, and that HUD should not set any maximum. Other comments propose that HAS should have discretion within outer limits set by HUD. Comments state that a HUD-imposed maximum is appropriate so that practices of different HAS are consistent. Comments note that consistency is desirable because of

portability. Some comments recommend that HUD should establish uniform rules on family absence.

Comments also contain a wide range of recommendations on the maximum length of absence from the unit (from 30 days to one year), and of factors that should affect the period in which the HA continues payments for an unoccupied unit. For example, comments propose allowing a longer maximum absence period for cases where the resident is absent because of documented illness or employment; or that assistance should be terminated immediately if the resident is imprisoned. Comments propose that the maximum absence period should be the same as the period for automatic termination of assistance where the HA has not made any assistance payment under the HAP contract (i.e., where the income-based family share equals the full rent to owner).

Comments note that assistance should terminate right away if the family has permanently vacated the unit. The HA should have power to determine whether the family has vacated the unit.

Comments state that the HA must give the family notice and opportunity for a hearing before terminating assistance because of family absence.

##### *Absence From Unit: Final Rule*

The final rule provides that: “The family may be absent from the unit for brief periods. For longer absences, the HA administrative plan establishes the HA 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 HA may allow absence for a lesser period in accordance with HA policy. (§ 982.312(a))

“Absence” is defined to mean that no member of the family is residing in the unit. (§ 982.312(c))

The HA has broad discretion to set local policy on family absence, but must state these policies in the HA administrative plan. (§ 982.54(d)(10); § 982.312(e)) The policy includes:

- How the HA determines whether or when the family may be absent, and for how long. For example, the HA may establish policies on absences because of vacation, hospitalization or imprisonment. (§ 982.312(e)(1))
- Any provision for resumption of assistance after an absence, including readmission or resumption of assistance to the family. (§ 982.312(e)(2))

The final rule requires termination of housing assistance payments if the

family is absent from its assisted unit for longer than the maximum permitted absence. The term of the HAP contract and assisted lease also terminate. (§ 982.312(b)) Before terminating payments under the HAP contract, the HA must give the family the opportunity for an informal hearing. (§ 982.555(a)(1)(vi); § 982.555(a)(2)) The owner must reimburse the HA for any housing assistance payment for the period after the termination. (§ 982.312(b))

Under the final rule, the HA has great flexibility to establish local policies on tenant absence, including different rules on the length of allowable absence in different circumstances. The family may be absent for "brief" periods. However, a family may not be away from the unit for more than 180 consecutive days in any circumstances. The HA has broad discretion to set policy for absences of less than 180 days.

As suggested by some comments, the 180 maximum absence interval is the same as the interval for termination of the assistance contract because no assistance is paid (termination because family contribution equals the maximum HUD subsidy). (§ 982.455(a)) In the case of family absence, assistance payments are terminated so that the HA does not waste subsidy by continuing to pay for an empty unit. In the case where no assistance has been paid for 180 days, the assistance contract is terminated so that the program slot can be freed-up and used for another family (even though the unit is occupied and the HA is not making any payment for the unit).

As suggested by comments, HAs must distinguish between cases of prolonged absence from a unit, and cases where the family simply moves out of the unit. If the family moves out, the HA may not continue assistance after the month when the family moves out. If the family has not moved out, but is absent from the unit, the HA may elect to continue assistance payments for a maximum of 180 days, as determined in accordance with the HA policy.

In practice, of course, HAs will be confronted with difficult problems in determining whether a family is actually living in, has moved out, or is otherwise absent from the unit; and in determining the length or reason for family absences. Under this rule, a family is obligated to notify the HA before the family moves out. (§ 982.309(f)) However, the family may fail to give this notice. The HA may be uncertain whether the family moved out or intends to return after an absence.

The final rule specifies that the family is obligated to give the HA information on family absence from the unit, and to

cooperate with the HA for this purpose. (§ 982.312(d)(1); § 982.551(i)) The HA may adopt appropriate techniques to verify family occupancy or absence, including letters to the unit, phone calls, visits, or questions to the landlord or neighbors. (§ 982.312(d)(2))

#### K. Family Break-up

The proposed and final rule provide that the HA administrative plan must describe the HA's discretionary policies on how to determine who remains in the program if an assisted family breaks up. (final rule § 982.315) Resolution of these issues is left to HA discretion in accordance with the HA policy. Comments generally agree that HUD should leave resolution of such issues to the HA, and that the rule should confirm that the HA's decision is final, and not subject to appeal. Some comments request more guidance on how the HA should exercise its discretion.

Other comments assert that HUD should establish a national policy on who keeps the Section 8 subsidy after a family break-up. These comments object to granting discretion for local HAs to decide these issues, and object to the lack of regulatory guidance for exercise of this discretion. These comments state that the absence of guidance may lead to arbitrary and inequitable results, or violations of the Fair Housing laws.

Comments suggest various factors or interests that could be considered in deciding who receives assistance after a breakup:

- Whether assistance should stay with the family members who remain in the unit (during or after the initial lease term).
- The interest of children.
- Spousal abuse.
- Medical condition.
- Special needs of a disabled family member for accessibility features.

The final rule confirms that the HA has authority to determine which family members continue to receive assistance after a family breaks up. The HA policy must describe how the HA determines what family members will remain in the program if the family breaks up. (§ 982.315(a); § 982.54(d)(11)) The final rule makes clear that the HA has broad discretion to decide these issues. The rule does not require the HA to use any particular procedure for making such decisions, and does not require the HA to consider any particular factors. The rule confirms, as suggested by public comments, that the factors to be considered by the HA in making this decision may include:

- Whether the assistance should remain with family members remaining in the original assisted unit.
- The interest of minor children or of ill, elderly or disabled family members.
- Whether family members are forced to leave the unit as a result of actual or threatened physical violence against family members by a spouse or other member of the household.
- Other factors specified by the HA. (§ 982.315(b))

The HA is not required to devise a complete set of rules for disposing of the issues posed because of family break-up. The HA is free to leave room for case by case decision, based on the circumstances of individual cases. The HA is merely required to adopt a procedure for handling these issues, and to state the procedure in the administrative plan. Under this rule, the HA is not required to routinely submit the administrative plan, including the HA family break-up policy, for HUD review or approval.

The final rule provides that when 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 HA is bound by the court's determination of which family members continue to receive assistance in the program. (§ 982.315(c))

### V. Where Family Can Live and Move

#### A. Eligible Housing

The rule provides that Section 8 tenant-based subsidy may not be used for certain types of housing, and may not be combined with certain other types of housing subsidy. (§ 982.352) The final rule revises several provisions on this subject.

##### 1. HUD-Owned Unit

When the proposed rule was published, the law provided that a Section 8 "owner" must be either a "private" person or entity, or a public housing agency. (42 U.S.C. 1437f(f)(1)) HUD is neither a private entity nor a public housing agency. For this reason, the proposed rule would have prohibited assistance for a unit that is owned by HUD. However, the law was amended in 1994 to provide that an owner may be "an agency of the Federal Government". (Pub. L. 103-233, April 11, 1994, section 101(d), 108 Stat. 357, amending the Section 8 "owner" definition) This amendment was intended to permit HUD to receive Section 8 housing assistance payments as a Section 8 owner when HUD takes title to units covered by a Section 8 HAP

contract. Because of the statutory change, the final rule deletes the prohibition against use of HUD-owned units.

## 2. Prohibition of Other Subsidy

The rule prohibits assistance for a unit that benefits from "duplicative" housing subsidy from a federal, State or local source. (§ 982.352(c)(9)) The proposed rule would have added a new provision that also prohibits assistance for a unit receiving, or which received in the past 5 years, a local or State mortgage interest subsidy, construction or rehabilitation subsidy or project-based rent-subsidy.

Public comments object to the proposed prohibition of assistance for projects that benefit from a State or local interest subsidy, or construction or rehabilitation subsidy. Comments point out that this restriction would preclude use of housing developed with the benefit of State or local subsidy, including housing for the disabled. Comments note that the development and rehabilitation subsidies play a different role from the Section 8 rental subsidy. Development subsidy increases the supply of affordable housing. Although development subsidy reduces debt service requirements, operators need rent to cover maintenance and operating expenses. Rental subsidy helps families afford the rent.

After consideration of public comment, HUD has eliminated the blanket prohibition of Section 8 assistance for housing that has benefitted from a State or local subsidy for construction or rehabilitation, or a mortgage interest subsidy. HUD agrees that subsidies to increase the supply of affordable housing perform a different role from Section 8 subsidies for rental of available housing. Section 8 families should not be barred from renting such housing.

The proposed rule would have prohibited use of units that received subsidy in the past 5 years. The final rule does not include any limitation on use of units that received any form of State or local subsidy before receiving the Section 8 assistance. The final rule prohibits a family from receiving tenant-based assistance for housing currently assisted by a State or local "rent subsidy". (§ 982.352(c)(8)) This prohibition applies whether the rent subsidy is project-based or tenant-based.

In addition to the list of specific types of housing subsidies that may not be combined with the Section 8 tenant-based subsidy, the final rule continues to prohibit Section 8 assistance for a unit that is assisted by "any other" duplicative governmental subsidy, from

a federal, State, or local government. (§ 982.352(c)(9)) This prohibition is intended to promote maximum coverage from available public subsidy resources, to avoid waste of scarce Section 8 subsidy, and to avoid windfall payments to a subsidized family or owner.

The rule provides that HUD has authority to determine whether a particular housing subsidy source is "duplicative". However, the rule specifies that 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.

In the voucher program, a family may choose to lease a unit for a rent exceeding the HA payment standard, and the excess rent is not covered by an increase in the Section 8 housing assistance payment. The family must therefore find funds to pay this additional amount. A comment recommends that the rule should allow a State or local subsidy that covers excess rent payment by the family, and thus hold the family share below 30 percent of adjusted income. This comment is not adopted. The final rule prohibits any other State or local rent subsidy for a family assisted with Section 8 tenant-based assistance.

## 3. HA-Owned Housing

A family may lease housing that is owned by the HA responsible for administration of the program. (§ 982.352(b)) By law, an HA may be a Section 8 owner, and the HA as contract administrator may enter into a contract with itself as the Section 8 owner. (42 U.S.C. 1437f(a)) Because of the inherent conflict in the HA's roles as contract administrator and unit owner, the proposed rule provided that HUD must have approved the unit rent before execution of the HAP contract.

Comments object to the requirement for HUD approval of unit rents. Comments suggest that approval is not necessary if the rent is within program guidelines. Other comments recommend that HUD should establish initial rent thresholds for the HA program. The HA should only need HUD approval if the proposed rents are above the pre-established level.

The final rule retains the requirement for HUD approval of the rents for HA-owned tenant-based units. (§ 982.352(b)(iv) and (v)) When a family wants to rent a unit owned by the HA that runs the program, the HA must inform the family (orally and in writing) that the family may select any eligible dwelling. The unit must be freely

selected by the family, without HA pressure or steering. (§ 982.352(b)(i))

## 4. Overlapping Assistance

A participant family may move to a new unit with continued tenant-based assistance. Comments ask whether the assisted lease for a new unit can commence before the termination of assistance on the prior unit, or whether any overlap of assistance is a prohibited double subsidy.

A new provision is added to make clear that the term of the assisted lease for a new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the housing assistance payment for the month when the family moves out and the first assistance payment for the new unit is not considered to constitute a duplicative housing subsidy. (§ 982.311(d)(2))

## B. Portability

### 1. Area Where Family Can Rent

In the proposed rule, the "leasing area" was defined as the area where a family can lease a unit with tenant-based assistance inside or outside the HA jurisdiction. In the proposed rule, the "extended operation area" was defined as "an area which is outside the HA jurisdiction (as determined by State or local law), but is inside the same State, the same MSA, or an MSA that is next to the same MSA". The final rule does not include either of these terms and definitions.

The statute requires portability within the same State, same MSA and a contiguous MSA as the HA. (42 U.S.C. 1437f(r)(1)) Many comments object to expanding portability beyond the same State as the initial HA. Others recommend national portability, but state that the Department should allow HAs to limit the number of families moving under portability, or require the families to show "good cause". The final rule provides that a family may move under portability anywhere in the United States in the jurisdiction of an HA administering a Section 8 voucher or certificate program. (§ 982.353(b)(4))

### 2. Portability in First Year After Admission

The final rule revises provisions on portability during the first year after a family's admission to the program. By law, portability applies during this period if the family is "living within" the HA jurisdiction "at the time that such family applies" for assistance from the HA. (42 U.S.C. 1437f(r)(1))

The final rule provides that the family may lease a unit under portability

during the first year after admission if either the household head or spouse of an assisted family already had a "domicile" (legal residence) in the jurisdiction of the initial HA at the time when the family first submitted an application for participation in the program to the initial HA. (§ 982.353(c)(1)) Generally, transient occupancy does not constitute legal residence in a jurisdiction under State and local law. The individual must intend to establish a home in the jurisdiction.

If this test is not met, the family does not have any right to portability during the first year of assisted occupancy. The proposed rule would have provided that in this situation, the family "may only lease a unit in the (initial) HA jurisdiction". The final rule specifies that while the family does not have a right to portability, the family may lease a unit outside the HA jurisdiction if the initial and receiving HA voluntarily agree to allow a portability move by the family to the jurisdiction of the receiving HA. (§ 982.353(c)(3))

### 3. Portability—Family Eligibility

The proposed rule would have provided that since a portable family had already been determined eligible by the initial HA, the receiving HA was not required to redetermine family eligibility for participation in the program. The final rule provides that the initial HA is responsible for determining whether the family is income eligible in the area where the family wants to lease a unit. (§ 982.355(c)(1)) However, the receiving HA may opt to conduct a reexamination of income in order to coordinate the anniversary of the HAP contract with the reexamination date, or for other reasons. If the receiving HA opts to conduct a new reexamination, the receiving HA may not delay issuing the family a voucher or certificate or otherwise delay approval of a unit unless the recertification is necessary to determine income eligibility. (§ 982.355(c)(4))

Further, the final rule reiterates the general program admission requirements (§ 982.201(b)(2)) as applied to portability:

—If the family is not a current participant in the initial HA certificate or voucher program, the applicable income limit for admission to the receiving HA certificate program or voucher program is the receiving HA income limit for the area where the family will be initially assisted in the program. The family may only use the certificate or voucher to lease a unit in an area

where the family is income-eligible at admission to the receiving HA program. (§ 982.353(d)(1))

—If a participant in the initial HA certificate or voucher program is moving between these programs (the family is either moving from the initial HA certificate program to the receiving HA voucher program, or from the initial HA voucher program to the receiving HA certificate program), the family must meet the eligibility criteria for the program to which the family is being admitted. Since a family moving between the voucher and certificate programs is continuously assisted, the applicable income limit is the receiving HA low-income limit (80 percent of median income) for the area to which the family will move. (§ 982.353(d)(2) and (3); see § 982.201(b)(1))

—For continued assistance in the same program, income eligibility is not redetermined. (§ 982.353(d)(3))

### 4. Portability—Funding

The proposed rule would have provided that if funding was available, a receiving HA would be required to absorb the incoming family with funding under its own consolidated ACC. The proposed rule would have also required that HUD offer funding to the receiving HA to cover the net annual increase in the HA tenant-based program because of portability. These provisions are not mandated in the final rule.

While the Department received positive comments concerning the mandatory absorption requirement, other comments assert that this approach is flawed. The major concern was the impact the required absorption of portable families would have on the receiving HA's waiting list. By requiring HAs to absorb portable families with any assistance available through new funding or turnover, the wait for applicants at the receiving HA could be significantly lengthened. Comments express skepticism that appropriated funds will fully fund the net annual increase in the number of families absorbed into the receiving HA program. Comments recommend that HUD require HAs to absorb a certain number of families based on the amount of new funding or historical turnover rates, and that HUD reimburse HAs for absorbing families exceeding those thresholds.

Instead of prescribing a portability funding method that relies on allocating appropriated funds that may be insufficient to reimburse receiving HAs for portability moves at the desired level, and instead of prescribing detailed procedures that may not work

well in all situations, the final rule allows HUD to exercise any of the following options for portability reimbursements:

- HUD may transfer funds for assistance to portable families to the receiving HA from funds available under the initial HA ACC.
- HUD may provide additional funding (e.g., funds for new units) to the initial HA to compensate for funds transferred for portability purposes.
- HUD may provide additional funding (e.g., funds for new units) to the receiving HA to reimburse the HA for absorption of portable families.
- HUD may require the receiving HA to absorb portable families. (§ 982.355(f))

It is anticipated that HUD will test all of the portability funding options authorized by the regulations. In fact, the Notice of Funding Availability published in the **Federal Register** on March 3, 1995 provides for use of up to 50 percent of the fair share allocation of certificate and voucher funding for each allocation area to be allocated as reimbursement to receiving HAs for the costs to assist families that have moved under the portability procedures.

### 5. Portability—Billing and Administrative Procedures

The vast majority of comments agreed that most problems in administering assistance for portable families are caused by the billing process and differing HA portability procedures and information requirements. In response to this concern, the final rule details the portability procedures (§ 982.355(c)).

The final rule specifies that the initial HA must reimburse the receiving HA "promptly", both for housing assistance payments and administrative fees for a portability family. (§ 982.355(e)(2) and (3)) HUD may reduce the initial HA's administrative fee for late reimbursement to the receiving HA. (§ 982.355(e)(4))

The initial and receiving HA must follow financial procedures required by HUD. The receiving HA must use a HUD-prescribed portability billing form to bill the initial HA for housing assistance payments and administrative fees. (§ 982.355(e)(5)) The initial and receiving HA must comply with billing and payment deadlines under the financial procedures.

## VI. Dwelling Unit: Housing Quality Standards, Subsidy Standards, Inspection and Maintenance

### A. Housing Quality Standards (HQS): General

The rule provides that the housing quality standards or "HQS" are the HUD

minimum quality standards for housing assisted under the tenant-based programs. Program housing must comply with HQS, both at initial occupancy and during the term of the assisted lease. (§ 982.401(a)(1)) The HA inspects the unit before approving the tenancy (§ 982.305(a) and (b)), and must reinspect the unit at least once every year. (§ 982.405(a))

Comments note that HUD did not provide the HA with any latitude to pass units with minor HQS violations. Comments recommend that HUD allow HAs to pass units on a conditional basis to enable immediate leasing for at-risk families in desperate need of housing. An HA would require the owner of a unit with a conditional HQS approval to fully comply with HQS within a specified period of time.

HUD has not adopted the recommendation to permit conditional approvals of units that fail HQS. Conditional HQS approvals were allowed for the Section 8 certificate program in the 1970's, but were discontinued because of major enforcement problems. When conditional approvals were allowed, many owners did not make promised repairs, or HAs did not reinspect the conditionally approved units. The goal of the Section 8 tenant-based programs is to assist eligible families to pay rent for decent, safe, and sanitary housing. (See 42 U.S.C. 1437, 1437f(a) and 1437f(o)(5)) Assistance for units that do not meet the HQS defeats this goal, and provides no incentive for owners to maintain quality housing stock for rental by low-income families.

Comments suggest that HUD needs to review the whole question of appropriate HQS standards. Comments state that HQS standards are totally inadequate, and that some are too loose and others are ridiculously tight. Other comment suggests that a Task Force should be assembled to reexamine the HQS.

Program experience demonstrates that the HQS, when correctly applied and administered, are an excellent standard for ensuring minimum livability and safety. Alleged problems of the HQS standards often result from inaccurate interpretations of the standards. For example, comments on HQS often claim that requirements concerning gutters, screens and storm doors are not essential, and should not be covered by the HQS. In fact, these three items are not HQS requirements. HUD will continue its efforts to explain the HQS criteria and highlight common misunderstandings of HQS requirements.

Comments indicate that some HAs have been charging families for repeat inspections, and object to this practice. HUD agrees that charging a family for inspection of the unit is inappropriate. The HA earns an administrative fee that covers the administration of the tenant-based programs, including HQS inspections. In response to the comment, the rule is amended to confirm that HA may not charge the family or the owner for an initial inspection or a reinspection of the unit. (§ 982.405(e))

#### *B. Housing Quality Standards (HQS): Acceptability Criteria*

Comments recommend using local codes instead of the regulatory HQS, or recommend adding local code requirements to the regulatory HQS. The final rule states, as proposed, that HUD may permit an HA to use acceptability criteria variations that are based on local codes or national standards, or may permit variations because of local climatic or geographic conditions. (§ 982.401(a)(4)(iv))

The final rule also provides that HUD will not approve HQS variations that unduly limit the amount and types of rental housing stock available at or below the FMR that would otherwise meet the HQS of the program (e.g., specific square footage requirements for kitchen counter space). (§ 982.401(a)(4)(iv))

#### *C. Housing Quality Standards (HQS): Specific Disposal*

##### 1. Food Preparation and Refuse Disposal

Comment requests that the acceptability criteria allow microwave ovens, because some participants are willing to live in units that provide them with microwave ovens instead of an oven and/or stove with top burners. The HQS has been modified to allow microwave ovens as follows:

—*If the oven and stove are tenant-supplied:* A microwave oven may be substituted for an oven and/or stove with top burners.

—*If the oven and stove are owner-supplied:* A microwave oven may be substituted for an oven and/or stove with top burners if the tenant agrees and the owner treats all tenants alike (e.g., microwaves are provided for both non-subsidized and subsidized tenants). (§ 982.401(c)(2))

##### 12. Space and Security

###### *Space—Bedroom or Living/Sleeping Room*

The proposed rule would have deleted the term “living/sleeping” room and substituted the term “living/

bedroom”. Comments ask for clarification on whether or not the use of a different term meant that HUD was revising current policy permitting other rooms not classified as bedrooms (e.g., a den, living room or dining room with windows) to be counted as a “sleeping room”. HUD did not intend to change the policy, which permits families to use a room with a window and two electrical outlets as a living/sleeping room, to meet the HQS space requirement of one bedroom or living/sleeping room for each two persons. Editorial changes have been made throughout the rule to restore the term “living/sleeping”.

Comments object to the requirement that persons of opposite sex, other than husband and wife or very young children, may not be required to occupy the same bedroom or living/sleeping room. An HA comment indicates that the agency requires unmarried “live-ins” who are “significant others” to share a bedroom. Comments suggest that HUD state the requirement as two persons per bedroom with the proviso that the head of household not be required to share a bedroom with a child, and let the family make its own sleeping arrangements.

The comments indicate confusion about the relationship between the HQS space requirements and the HA's occupancy requirements (now called “subsidy standards”). The HQS space requirements set a standard for the maximum number of people that can occupy the unit. The HQS space standard does not dictate who sleeps in each bedroom or living/sleeping room. Further, the HQS space requirements allow space other than bedrooms to be considered “living/sleeping rooms” to ensure maximum flexibility in determining whether a unit is overcrowded. In contrast, the subsidy standards set by the HA determine subsidy levels, and are generally based on the ages and sex of the family members, and on other factors considered under the HA policy. (See § 982.402)

###### *Window*

Comment asks if a combination storm/screen window is lockable, can it be assumed that the inside window does not have to be lockable. The commenter is correct. The rule provides any dwelling unit windows that are accessible from the outside must be lockable. (§ 982.401(d)(2)(iii))

The proposed rule would have provided that windows that are nailed shut are acceptable if the windows are not needed as an alternate exit in case of fire. Comment suggests that the

regulations should be revised to read as follows, "Windows which are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire". HUD has adopted this suggestion. (§ 982.401(d)(2)(iii))

### 3. Thermal Environment

Several comments suggest that HAs should be permitted to approve Oxygen Depletion System (ODS) heaters in all rooms not used for sleeping if permitted by local code. The Department has not adopted this suggestion. ODS heaters are unvented space heaters. The HA must request HUD approval of a variation in the acceptability criteria. (See § 982.401(e)(2)(ii))

### 4. Structure and Materials

Comment suggests that ceilings, walls and floors requirements be changed from "not have any serious defects such as severe bulging or leaning, holes, loose surface materials, severe buckling, missing parts, or other serious damage" to "must be in good repair". The Department has not adopted this language.

The language in the rule is more specific and less open to subjective interpretations. The Department is, however, retaining the word "large" to describe holes that will cause a unit to fail the HQS standard. (§ 982.401(g)(2)(i))

### 5. Lead-Based Paint

This final rule adopts much of the lead-based paint language in the proposed rule. However the final rule also:

- Adds language from a proposed rule published on May 12, 1994 at 59 FR 24850 concerning evaluation and treatment of lead-based paint.
- Makes changes to conform to new recommendations of the Department of Health and Human Services, Centers for Disease Control (CDC).
- Responds to a May 1994 GAO briefing report to congressional committees entitled "Lead-Based Paint Poisoning—Children in Section 8 Tenant-Based Housing Are Not Adequately Protected".

Comments note that the proposed rule did not delete the requirement for repainting an area that has been treated for lead paint, and that the requirement is no longer applicable under 24 CFR 35.24(b)(2)(ii). The Department inadvertently neglected to remove this requirement from the HQS in the proposed rule. Because the repainting requirement was eliminated in 1987, the final rule does not include the repainting requirement.

The final rule changes the definition of an elevated blood-lead level (EBL) to conform to recommendations of the Department of Health and Human Services, Centers for Disease Control (CDC), with respect to blood lead levels that require environmental intervention. This new definition of EBL was also proposed in the May 12, 1994 proposed rule. The new standard for environmental intervention would be equal to or exceeding 20 ug/dl for a single test or 15–19 ug/dl in two consecutive tests several months apart. Many people are under the impression that the CDC, in its October 1991 Statement, "Preventing Lead Poisoning in Young Children", effectively lowered the definition of an EBL to 10 ug/dl. (See, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Preventing Lead Poisoning in Young Children, A Statement by the Centers for Disease Control, October 1991, page 2) It is true that the Statement indicates that the overall goal is to reduce children's blood lead levels below 10 ug/dl. However, the Statement does not recommend medical or environmental intervention at levels of 10–14 ug/dl. Pursuant to CDC advice in the October 1991 Statement, the Department is also changing the childhood age of concern from less than 7 years of age to less than 6 years. (§ 982.401(j))

The final rule changes proposed requirements for the evaluation and treatment of lead-based paint in the May 12, 1994 proposed rule. The final rule describes requirements for testing to determine whether paint surfaces contain lead-based paint, and for treatment of defective surfaces.

A defective paint surface must be treated if the total area of defective paint on a "component" is:

- More than 10 square feet on an exterior wall;
- More than 2 square feet on an interior or exterior component with a large surface area (other than exterior walls). Such components include ceilings, floors, doors, and interior walls.
- More than 10 percent of the total surface area on an interior or exterior component with a small surface area. Such components include window sills, baseboards and trim. (§ 982.401(j)(6)(i))

For this purpose, component is defined as:

"an element of a residential structure identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a

porch floor, stair treads in a common stairwell, or an exterior wall."

(§ 982.401(j)(2))

The requirement to test chewable surfaces for lead-based paint is amended to allow laboratory analysis of paint samples. Accordingly, the definition of lead-based paint is amended to add 0.5 percent by weight or 5000 parts per million (PPM). The final rule includes acceptable treatment methods, prohibited practices, cleanup and tenant protection provisions.

The final rule also requires that the owner inform the family and the HA if the owner has any knowledge of the presence of lead-based paint. In addition, the rule adds a requirement for the HA to match the names and addresses of Section 8 participants with the names and addresses of children that local health officials have determined have an EBL. These changes were made in response to a May 1994 GAO briefing report to congressional committees. (The report is entitled "Lead-Based Paint Poisoning—Children in Section 8 Tenant-Based Housing Are Not Adequately Protected".)

Analysis of the need for additional changes to the lead-based paint housing quality standard requirements is being deferred to publication of the proposed rule to implement sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and to revise the lead-based paint requirements for all HUD programs.

### 6. Access

Comment recommends that HQS access requirements should require accessible features for persons with disabilities. The Department has not adopted this suggestion. The accessibility requirements for federally assisted housing are governed by the regulations implementing Section 504 of the Rehabilitation Act of 1973. The rule requires compliance with disabled accessibility requirements under these regulations, and with other equal opportunity requirements. (§ 982.53(a))

### 7. Site and Neighborhood

Comments object to the inclusion of "very high crime rate" as an example of a neighborhood condition that would cause a unit to fail inspection. Comments indicate that such a determination would be a subjective conclusion by inspectors, and may limit in certain areas the number of units available to program participants. Other comment requests that "danger of fire" be deleted or clarified.

HUD has deleted "very high crime rate" as an example under the acceptability criteria. Further, "danger

of fire" has been replaced with "fire hazards", the original wording from the current rules and program handbook. (§ 982.401(l))

#### 8. Smoke Detectors

The final rule implements the new statutory requirements concerning fire protection and safety under the Fire Administration Authorization Act of 1992. (Section 106 of Pub. L. 102-522, adding a new section 31 to the Federal Fire Prevention and Control Act of 1974) The new law prohibits the use of housing assistance for certain assisted and insured properties, unless various fire protection and safety standards are met.

A comment objects to the provision requiring smoke detectors specifically designed for hearing-impaired persons, because the proposed rule did not define "hearing-impaired person" and "hearing-impaired smoke detector". HUD notes that the requirement for smoke detectors with an alarm system for hearing-impaired persons is not new, and has been required by HUD since August 1992. Smoke detectors for the hearing-impaired must comply with the detailed technical specifications in National Fire Protection Association Standard (NFPA) 74 (or its successor standards). For assistance in determining specific requirements mandated by NFPA 74, HAs should contact State or local fire safety officials with jurisdiction over the proposed property and with expertise concerning such requirements.

HUD also declines to define hearing-impaired person in the rule. Residents who need visual alarms because of hearing impairment should advise owners and HAs of this need. The family may request any special equipment from the owner, since the family is the best judge of the individual needs of family members. (§ 982.401(n))

### VII. Housing Assistance Payments Contract and Owner Responsibility

#### A. Family Contribution

Comments recommend that the rule should specify that 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 when the HA stops making payment to the owner. This recommendation is adopted.

The final rule makes clear that the family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment. The HA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the

owner. The owner may not terminate the tenancy of the family for nonpayment of this amount. (§ 982.451(c)(4)(iii); § 982.310(b)) (The same provision is stated at two points.)

#### B. Fraud and Other Program Violation

The proposed rule would have provided that an owner breached the HAP contract if the owner committed fraud or made any false statement in connection with any federal housing assistance program or with a federally insured mortgage or HUD loan. The final rule provides that owner breach includes fraud, bribery or any other corrupt or criminal act in connection with any federal housing program. (§ 982.453(a)(4))

The proposed and final rule provide that violation of "any other" Section 8 assistance contract is a breach of the particular tenant-based HAP contract. (§ 982.453(a)(2)) The HA may terminate a tenant-based HAP contract because the owner has breached a tenant-based or project-based Section 8 HAP contract (between the owner and the same or another HA, or between the owner and HUD).

Comments assert that it is unfair to terminate a tenant-based HAP contract with an owner because the owner has breached another Section 8 assistance contract, and recommend that this provision be deleted. This recommendation is not adopted. The provision strengthens the HA's authority and leverage to induce owners to comply with Section 8 program requirements. The regulatory list of provisions which constitute a breach of the HAP contract is substantially based on language of the assistance contract forms currently used in the voucher and certificate programs. (§ 982.453)

#### C. HA Remedies for Owner Breach

The proposed rule provided that HA remedies for owner breach of the HAP contract included reduction of housing assistance payments. Comments recommend adding a provision confirming that payments may be "abated". The final rule provides that HA remedies include an "abatement or other reduction" of housing assistance payments. (§ 982.453(b))

#### D. Automatic HAP Contract Termination: No HA Payment for 6 Months

The proposed rule provided that the HAP contract terminated automatically three months after the last housing assistance payment. Comments object to this provision. Comments indicate that the time frame was too short, considering fluctuations in the job

market. Comments recommend a six month time frame. The final rule provides that the HAP contract terminates automatically six months (180 calendar days) after the last housing assistance payment to the owner. (§ 982.455(a)).

#### E. Late Payment by HA to Owner: Late Fee

Each month, the HA pays the housing assistance payment to the owner to subsidize occupancy by the family under the lease. The rule specifies that the HA is obligated to pay the owner promptly when payment is due to the owner in accordance with the HAP contract. (§ 982.451(c)(5))

Sometimes an HA may fail to pay the owner on time. In response to public questions, the final rule clarifies that the HA may be obligated to pay a late payment fee in accordance with State or local law. However, unless authorized by HUD, the HA may not use program receipts other than the following for payment of any such late payment fee:

- (1) The HA administrative fee or
- (2) The administrative fee reserve.

The federal rule does not itself grant an owner *any right* to a late fee for HA delay in payment to the owner. The rule is only intended to make clear that the federal regulatory scheme does not override State or local law that may give the owner a right to recover late fees from the HA for delinquent payments under the HAP contract.

#### F. 90 day Owner Termination Notice

By law, an owner must give notice to the family and HUD, 90 days before a "termination" of the HAP contract. (42 U.S.C. 1437f(c)(9)) For purpose of the termination notice requirement, "termination" means either:

- The owner's "refusal to renew", called an "opt-out", or
- The "expiration" of the HAP contract.

In the tenant-based programs, "opt-out" refers to an owner's decision to terminate tenancy of an assisted family after the initial year for a business or economic reason (such as desire to rent the unit for a higher rental, or to convert the property to another use). (§ 982.455(b)(2)(ii))

In the tenant-based programs, the HAP contract and the assisted lease do not have a pre-defined end of term. The term of the HAP contract is the same as the term of the lease. The contract and lease generally extend indefinitely until terminated by the owner for lease violation or other good cause. In this context, the rule provides that "expiration" means the occurrence of either of the following events:

- Automatic termination of the HAP contract when six months (180 calendar days) have passed since the last housing assistance payment.
- An HA determination (in accordance with HUD requirements) that the HAP contract must be terminated because there is insufficient funding under the consolidated ACC to support continued assistance for families in the program. (§ 982.455(b)(2)(iii))

Comments recommend that the rule specify that an owner may not terminate any HAP contract, or evict a tenant, if HUD determines the termination is not lawful. The law provides that HUD must review the reasons for terminations as stated in the owner's termination notice. Upon such review, HUD must:

"issue a written finding of the legality of the termination and the reasons for the termination, including the actions considered or taken to avoid the termination".

The rule requires that on receiving the owner termination notice (in case of an "expiration" or "opt-out") the HUD field office must review the notice and consider whether there are additional actions which should be taken to avoid the termination. (§ 982.455(b)(4)) After HUD review of the owner notice, the HUD field office will issue a written finding, as provided by law, on the legality of the HAP contract termination, and the reasons for termination as stated in the owner's notice, including any actions taken to avoid the termination. (§ 982.455(b)(4)(iii)) Within 30 calendar days of HUD's finding, the owner must provide written notice of HUD's decision to the tenant.

The law does not require HUD approval of the termination. The final rule adds a new provision clarifying that the owner may proceed with eviction whether HUD approves or disapproves, or fails to complete the required review of the owner notice before expiration of the 90 day review period. (§ 982.455(b)(4)(iv))

## VIII. Family Obligations

### A. Statement of Family Obligations

The rule lists the grounds for which the HA is authorized to deny assistance to an applicant or terminate assistance to a participant because of the family's action or failure to act. (§ 982.552(b))

The HA may deny or terminate assistance for violation of family obligations. (§ 982.552(b)(1)) The final rule modifies the statement of family obligations under the program. (§ 982.551)

Some comments support HUD's proposed statement of family obligations, and other provisions on denial or termination of assistance.

Comments agree that the HA should have the power to terminate assistance for violation of the family's program obligations. Other comments recommend some changes in these provisions.

Comments note that family violation of program obligations may be unintentional, minor or beyond the family's control. The comments state that the HA should only be authorized to terminate assistance because of serious or repeated violation of the family's program obligations. This recommendation is not adopted. All family obligations are important. The family is responsible for compliance with all family obligations, and the HA may terminate assistance for any violation. To terminate assistance, the HA must show that the family has committed the violation charged. In general, the HA should not be required to show also that the violation of family obligations is "serious or repeated". To add this requirement would complicate and discourage the enforcement of program requirements. (However, an HA may only terminate assistance for a "serious or repeated" violation of the assisted lease. In this case, the regulatory standard for HA termination of assistance parallels the statutory authorization for eviction by the owner for "serious or repeated" violation of the lease.)

If the family has violated a program obligation, the HA has discretion to terminate assistance based on the facts of the particular case. (§ 982.552(c))

### B. Duty To Supply Required Information

The final rule restates provisions describing the family duty to supply information requested by the HA or HUD. (§ 982.551(b)) The family must supply any information that the HA or HUD determines is necessary in the administration of the program. Information includes any certification, release or other documentation requested by the HA or HUD. (§ 982.551(b)(1)) The final rule adds a new provision explicitly confirming that any information or documentation supplied by the family must be "true and complete". (§ 981.551(b)(4))

### C. Family Behavior and Violation of Lease

In this rulemaking, HUD has reexamined the appropriate role of program sanctions by the HA for family behavior in occupancy of an assisted unit, and for family violation of an assisted lease. Under current program rules, breach of the assisted lease with the landlord was not a violation of the family's program obligations, and was

not grounds for termination of assistance by the HA. Even after eviction, a family could move to a new unit with continued assistance in the tenant-based program.

The proposed rule expanded the obligations of a participant by providing that the family was responsible for certain types of HQS violation caused by the family. In addition, HUD specifically invited comment on whether lease violation by an assisted family should be designated as a distinct regulatory ground for termination of assistance.

### Comments

Some comments contend that the family's lease violation or behavior in occupancy should not be a ground for termination of assistance. According to these comments, the remedy lies with the family's landlord, who may evict the family for good cause. The HA should not displace the family if a landlord has not elected to evict, and should not usurp the decision of another landlord whether to rent to a family because of actions in a prior unit.

Comments state that Section 8 tenants should be treated like private tenants. The decision whether to accept or reject a tenant should be the landlord's private decision. The HA is not a party to the lease. HUD should not inject the HA into the relation between tenants and landlords. Comments recommend that the HA should not be permitted to condition program assistance on the family's suitability for tenancy. Comments also note that the HA is not equipped to investigate a landlord's claim of tenant misbehavior in occupancy. Comments claim that authorizing the HA to terminate assistance for breach of the lease "forces" the HA to assume the landlord's responsibility of enforcing the lease. This new role opens a Pandora's box for the HA.

Other comments urge that the HA should be permitted to terminate assistance for family violation of an assisted lease. The family should be held responsible for conduct during assisted occupancy. The HA should not allow a move by a family that fails to pay the rent or commits other violations of the lease. Allowing the HA to terminate assistance for family lease violation encourages improvement in family behavior. If a family violates the lease, denial of continued assistance saves scarce program resources for other, more deserving, families.

By statute, a Section 8 owner may evict for serious or repeated violation of the lease, as well as for other good cause. Comments state that the HA

should not be compelled to issue a new certificate or voucher after the family is evicted. Termination of assistance because of a lease violation would be an effective tool in administration of the program. Action by the HA complements eviction by the landlord. Under the current system, families are evicted from one unit after another. Comments suggest that this practice discourages participation by landlords.

Comments state that the HA should be authorized to terminate assistance because of serious or repeated lease violation by the family, or other good cause. Termination should only be permitted because of serious lease violations, but not for other lease violations. Termination should only be permitted for causes in the family's control. Comments also state that the HA should be permitted to terminate assistance to a family for chronic disorder, or for behavior that constitutes a nuisance (and the owner should be permitted to evict for these grounds). The HA should be permitted to terminate assistance if the tenant moves during the first year in violation of the lease.

Comments state that assistance should only be terminated if a family has been evicted by a court action. The existence of good cause should be determined in court.

#### *Final Rule*

The final rule adds provisions on family program obligations concerning tenancy under an assisted lease.

The description of family obligations now states that the family may not commit any serious or repeated violation of the lease. (§ 982.551(e)) As in the past, such behavior is grounds for eviction by the owner. In addition, such behavior is now grounds for termination of assistance by the HA. For example, the HA may terminate assistance payments, or deny permission to move with continued assistance, if the family has committed any serious or repeated violation of the assisted lease.

The rule provides that the family must notify the HA and the owner before the family moves out. (§ 982.314(d)(2); § 982.551(f)) The final rule would also provide that

- The family must promptly give the HA a copy of any owner eviction notice. (§ 982.551(g))
- If the family terminates the lease on notice to the owner, the family must give the HA a copy of the notice at the same time. (§ 982.314(d)(1); § 982.551(f))

#### *D. HQS Breach Caused by Family*

HUD proposed to allow termination of assistance for breaches of HQS that are caused by the family. Public comments on this proposal largely mirror the division of views on termination because of a family's lease violation or other behavior in occupancy.

Some comments object to termination of assistance because of family-caused HQS violation. The comments indicate that compliance with the tenant's obligation is a condition of occupancy under the lease. The owner has the responsibility to enforce these obligations. The rule should minimize HA interference with the relationship of the tenant and the owner.

Comments recommend that the tenant should only be responsible for HQS violations that substantially interfere with quiet enjoyment of the unit, or that make the unit unsafe and unsanitary. Family damage may be accidental or minor. Comments suggest that the HA should only be permitted to terminate assistance for HQS violation caused by reckless or malicious action by the family. The HA should not terminate assistance if HQS violation is beyond the tenant's control, or if there is other "good cause" for the tenant-caused HQS violation.

Comments object to terminating assistance payments to a landlord because the family's housekeeping results in HQS violation. Termination for this reason punishes the landlord for the family's behavior, and will be hard to enforce. The comments contend that an HA will be forced to go to court to defend termination of assistance in this circumstance.

Other comments welcome HUD's proposal to permit termination of program assistance for a family that violates the HQS. This change gives the HA control over program abusers, and will rid the program of chronic apartment destroyers.

Comments note that under the old rule the family has been allowed to trash a unit, and move on to the next assisted unit. This policy has created bad feelings among landlords, and makes the program harder to sell. Landlords can't understand why HAs continue subsidy for negligent tenants.

The final rule provides, as proposed, that the family is responsible for HQS violations caused by the family:

- By failing to pay for tenant-supplied utilities.
- By failing to supply appliances (that the owner is not required to supply under the lease).

—By damaging the unit (other than damage from ordinary wear and tear). (§ 982.404(b); § 982.551(c).)

The proposed rule would also have made the family responsible for vermin and rodent infestation caused by trash accumulation from poor family housekeeping. This provision is not included in the final rule.

Generally, owner leases provide that a tenant must keep the unit in a clean and safe condition, dispose of waste properly, and avoid damage to the unit. An owner may evict if family housekeeping creates a serious or repeated violation of the lease. (§ 982.310(a)) Under the new rule, the HA may terminate assistance for such violation of the lease. (§ 982.551(e).) There is no need for a separate provision on termination of assistance because of family housekeeping.

#### *E. Use and Occupancy of Unit*

The rule states family obligations concerning use and occupancy of the assisted unit:

- The family must reside in the unit. The unit must be the family's only residence.
- The HA must approve composition of the resident family.
- The family must promptly inform the HA of the birth, adoption or court-awarded custody of a child. The family must request HA approval to add any other family member as an occupant of the unit.
- The family must promptly notify the HA if any family member no longer resides in the unit.
- With HA approval, a foster child or a live-in-aide may reside in the dwelling unit. The HA may adopt policies concerning residence by a foster child or a live-in-aide, and define when HA consent may be given or denied. (§ 982.551(h))

#### *Approval of New Family Members*

The Section 8 program provides rental assistance for a dwelling unit leased to a low-income "family". (42 U.S.C. 1437f) The "family" may be a single person or a group of persons. (§ 982.201(c)(1)) The HA determines if a group of persons qualifies as a "family". (§ 982.201(c)(3)) The HA determines composition of the assisted family at admission to the program, and must also approve later changes in family composition. (§ 982.201; § 982.551(h)(2)) Except for birth, adoption or court-awarded custody of a child, the family must get HA approval to add any new family member.

Some comments approve the proposed rules on family composition,

including the family obligation to obtain HA approval to add a new family member. Comments state that this requirement will prevent the practice of "borrowing" children or "cousins" to keep the same unit size. Comments ask HUD to make clear whether the resident must get HA approval for residence by a girlfriend or boyfriend. Comments recommend that the owner should have the right to approve new unit occupants.

Some comments suggest that HUD should limit HA authority to approve or disapprove adding new family members. The HA should be required to adopt "reasonable policies". Comments recommend that HUD should eliminate the requirement for HA approval of new family members. The HA should adopt a "hands off" policy. The only program interest is to insure that a unit meets the subsidy standards, and subsidy is adjusted to reflect additional income of new unit occupants. Families are afraid to report new family members. A hands off policy may result in more accurate reporting of new family members and family income. Comments ask if the HA may deny approval of a child not living with the family when admitted to the program, and question whether such denial may constitute familial discrimination. Comments note that HA policy may not discriminate on the basis of familial status.

The final rule retains the requirement for HA approval to add new family members. The rule provides that composition of the assisted family residing in the dwelling unit must be approved by the HA. The family must promptly inform the HA of the birth, adoption or court-awarded custody of a child. The family must request HA approval to add any other family member as an occupant of the unit. (§ 982.551(h)(2))

HUD has not adopted the recommendations to restrict HA discretion, or to eliminate HA approval of new family members. Unrestricted admission of family members distorts the system for fair and orderly allocation of Section 8 assistance through the HA waiting list. Addition of new family members may also overcrowd the unit, or result in need for a larger unit size and a larger subsidy. In addition, assistance may only be provided to a "family", not to any self-selected group of individuals. The HA has the authority and responsibility to determine that the group of assisted individuals, including new residents, constitutes a family (under the definition utilized by the particular HA). In exercising its discretion to admit or deny new family members, the HA is subject to equal opportunity

requirements, including the prohibition of familial status discrimination.

The final rule does not add, as a family program obligation, a requirement to obtain the owner's approval for any new unit occupants. Of course, the owner has a legitimate proprietary interest in controlling occupancy of the owner's unit. The lease may, and typically will, include provisions that specify who can live in the unit, and require owner approval of additional unit occupants.

#### *Occupancy by Live-in-Aide or Foster Child*

The rule provides that a foster child or live-in-aide may only reside in the assisted unit with the consent of the HA. The HA may adopt policies defining when the HA may give or deny approval for occupancy by a foster child or live-in-aide. (§ 982.551(h)(4))

A live-in-aide resides in the unit to care for a person who is elderly, near-elderly (50 to 61) or disabled. (42 U.S.C. 1437a(b)(3)(B); "live-in-aide" definition at § 813.102; see § 982.201(c)(3)) The live-in-aide is not a member of the assisted family. Income of the live-in-aide is not included in family income (used to calculate family eligibility and contribution to rent).

Comments object to granting the HA "veto-power" over occupancy by a foster child or live-in-aide, and recommend that the requirement for HA approval should be eliminated. The HA is not qualified to determine whether the family can live independently without assistance of a live-in-aide. Comments claim that HAs do not have requisite procedural safeguards for such decisions. Denying approval for a live-in-aide could subject the HA to liability under the Fair Housing Act.

Other comments state that the rule should allow the HA to specify whether live-in-aides may reside in the unit, how many, and in what circumstances.

The final rule retains the requirement, as proposed, that the family must obtain HA approval for occupancy by a live-in-aide or foster child. In both cases there are important program interests in retaining the HA authority over such occupancy. In both cases, however, the HA must exercise its discretion in accordance with the Fair Housing Act. The HA must not discriminate on the basis of disability or familial status.

#### *Reduction in Size of Family*

The final rule adds a new provision stating that the family must promptly notify the HA if any family member no longer resides in the dwelling unit. (§ 982.551(h)(3))

#### *F. Business in Unit*

The rule provides that members of the family may engage in legal "profitmaking" activities in the assisted unit. Any use of the unit for business activities by family members must be incidental to primary use of the unit for residence by members of the family, and must be in accordance with local law. (§ 982.551(h)(5)) These provisions are intended to encourage work and earning by assisted families.

Most comments agree that the rule should allow legal profitmaking activity by the assisted family. Other comments suggest that the authorization for legal profitmaking activity may encourage illegal activities.

Comments argue that business activity should only be allowed with approval of the owner, and in accordance with the lease. Comments point out that an owner has a legitimate interest in controlling business activities in the owner's unit (for example a laundry business where owner supplies water; or engine repairs in the living room).

HUD agrees that the landlord's interest is affected by the tenant's conduct of business activity in the apartment. Tenant business could damage the unit or disturb other residents. However, an owner may exert control over occupant activities in the same fashion as for any tenancy—by including lease provisions on business use of the unit, and by enforcing such lease provisions. The lease (or owner's house rules under the lease) may require the tenant to get the owner's permission for any business use of the property, and may otherwise regulate use of the unit for business purposes. Provisions concerning business use of a unit are commonly included in boilerplate of residential leases, and are not inconsistent with HUD regulatory requirements or HUD-required lease addendum governing the assisted tenancy.

HUD has not added provisions requiring a tenant to secure landlord consent for any business use of the unit. The rule provisions allowing business activity by the assisted resident are intended to define the family's program obligation, and therefore the grounds for termination of assistance by the HA. Conversely, the statement of family obligations is not intended or required to establish the family's obligations to the owner under the lease.

Under this rule, an HA may terminate assistance for serious or repeated violation of the assisted lease. Where the lease prohibits or regulates business activity in the unit, a serious or repeated violation of this lease requirement is a

breach of family obligation. In this circumstance, the HA may deny or terminate assistance for business activity that violates the assisted lease.

Comments recommend that the family should only be allowed to engage in business activity with approval of the HA, and that the family should be required to give the HA information concerning the nature of activities in the unit. HUD is not persuaded that HAs should be given the power to approve or disapprove business activity in the unit (so long as business activity meets the standards expressed in the rule, i.e., that the activity is legal, and is incidental to residential use of the premises).

Assisted families should be treated as private market tenants, who can engage in business activities with the consent of the owner.

The HA has an interest in assuring that the unit is used as the family residence, that the business activity does not result in a violation of the HQS, and that business income is reported in calculation of the family contribution. A family is required to supply the HA with information that is necessary for administration of the program. The HA may therefore require the family to supply program-related information concerning business activity in the assisted unit.

## **IX. Denial or Termination of Assistance: Grounds and Procedure**

### *A. Grounds*

#### **1. General**

The rule lists the grounds on which an HA may deny or terminate assistance for a family because of the family's action or failure to act.

Comments endorse the proposed rules on denial or termination of assistance. Comments note that the rules encourage family responsibility, and allow HAs to target assistance to families who cooperate with program rules.

Comments state that the HA should be required to take all feasible steps to avoid termination of assistance and displacement of the family. The comments state that the rule should prohibit termination unless the family has been relocated.

The comments are not adopted. The decision to proceed with termination in each case must be left to the administrative judgment of the HA, in keeping with the statutory policy that HAs should be vested with the "maximum amount of responsibility" in the administration of their housing programs. (42 U.S.C. 1437) The procedures recommended by the comments would severely impair HA action to enforce local and national

program policies. Rehousing of families is not a practical prerequisite for termination of housing assistance.

The rule defines when the HA may deny or terminate assistance because of an action or failure by a member of the family. However, the HA decides whether and how to exercise this authority and discretion in the circumstances of a particular case. The final rule specifies that the HA may consider all of the circumstances of the individual case, including seriousness of an offense, the extent of participation or culpability of individual family members, and the effects of program sanctions on family members not involved in a proscribed activity. (§ 982.552(c)(1)) Previously, the rule explicitly confirmed the HA's discretion in exercising the authority to deny or terminate assistance for criminal activity by a family member. There was no parallel provision on denial or termination for other reasons. The final rule makes clear that the HA has the same discretion in deciding whether to deny or terminate assistance for any allowable grounds, not only for criminal action by a member of the family.

The rule also confirms that the HA has the authority to devise an appropriate remedy. The HA may permit continued assistance for certain members of the family, but terminate assistance for other family members who bear a greater responsibility for violation of family obligations. (§ 982.552(c)(2))

#### **2. Information for Family**

Comments state that the HA should be required to give the family a written list of the grounds for termination, and should be prohibited from terminating unless the family has been given this information.

HUD agrees that HAs should help program families know their obligations, and the grounds for termination of assistance. This knowledge reinforces the family's sense of responsibility for its own actions. A participant family should also know that it can ask for a hearing if the HA wants to terminate assistance because of family actions.

The rule is amended to provide that the HA must give the family a written description of:

- Family obligations under the program.
- The grounds on which the HA may deny or terminate assistance because of family action or failure to act.
- HA informal hearing procedures. (§ 982.552(f))

For a new program family, information on these subjects is included in the family information

packet that is given to the family at selection for the program.

(§ 982.301(b)(15), (16) and (17)) The revision makes clear that this basic program information must be given to families who are already in the program, and have not received this information at selection for the program. The rule does not require two notices to any family.

HUD has not adopted the recommendation to prohibit termination unless the family has been furnished a list of the allowable grounds of termination under the program. Such a requirement might force HAs to maintain records that the information has been served on program participants, to show that this termination prerequisite has been met. If the HA needs to terminate assistance for a family, such a requirement could block termination of assistance for good and substantial grounds (for example, fraud by the family) on the grounds that the HA did not give the family general program information listing the grounds for termination of assistance. If the HA moves to terminate assistance in a particular case, the family receives specific notice of the reasons for the proposed termination and opportunity for hearing. (§ 982.555(c)(2))

### **3. Distinction Between Denial or Termination**

Comments ask HUD to clarify the distinction between "denial or termination" of assistance. HUD's prior rules refer to "denial" of assistance both for an applicant and a participant. In general, the term "denial" in the old rule refers to HA withholding or refusing to take any HA action or approval leading to a commitment or commencement of assistance for the family, including refusing to issue a certificate or voucher, approve a lease or execute a HAP contract.

In the case of a participant, the old rule distinguished between:

- The grounds for which the HA could "deny" a new commitment of assistance to a program participant who wants to move to a new unit (by refusing to issue a new certificate or voucher, approve a new lease or execute a new HAP contract).
- The grounds for which the HA could "terminate" housing assistance payments under an outstanding HAP contract.

The new rule eliminates this distinction. The rule no longer distinguishes between grounds for "denial" or "termination" of assistance for a program participant. (This distinction was the source of the so-

called "ABC" problem under the old rule.)

The final rule states the grounds for which an HA may "deny" assistance for an applicant or "terminate" assistance for a participant. (§ 982.552(a)(2) and (3)) The rule also clarifies that

"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." (§ 982.552(a)(3))

If there are grounds for termination of assistance to a participant, the HA may terminate assistance "at any time", and can therefore at any time exercise any of the remedies comprised in the concept of termination. (§ 982.552(b))

#### 4. Crime by Family Member

The final rule provides that the HA may deny or terminate assistance at any time if members of the family have engaged in drug-related criminal activity or violent criminal activity. (§ 982.553(a)) "Drug-related criminal activity" includes both drug-trafficking and illegal use or possession of drugs. "Violent criminal activity" refers to criminal use of physical force against a person or property. (§ 982.4) The HA may deny or terminate assistance if the preponderance of evidence indicates that a family member has committed the crime, regardless of whether the family member has been arrested or convicted. (§ 982.553(c))

The rule provides that an HA may only deny or terminate assistance for drug use or possession by a family member if the criminal act occurred in the last year *before* the HA gave notice of proposed denial or termination of assistance for this reason. The HA may not terminate assistance for past use of drugs by a rehabilitated user who has not used drugs in the last year. Comments propose that the HA should only deny assistance for drug use or possession *after* HA notice. As HUD understands this proposal, assistance could be terminated for future drug use or possession, but could not be terminated for drug use or possession in the year preceding the HA notice. The recommendation is not adopted.

The HA may deny assistance for an addict who currently uses or possesses drugs. The proposed rule would have provided that the HA may not deny assistance for past drug use by an addict who "has recovered" from drug addiction. The final rule provides that the HA may not deny assistance for an addict who "is recovering, or has recovered from" an addiction.

(§ 982.553(b)(2)) The HA may require a family member who has engaged in the illegal use of drugs to submit evidence of participation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.

Some comments approve the provisions allowing the HA to deny or terminate assistance for criminal activity by members of the family. Other comments object to these provisions.

Comments state that HAs do not have capability to investigate criminal activity. Termination because of criminal activity by a family member harms other members of the household, and may cause homelessness. Family members may be victims of domestic violence, and may need counseling, assistance and advocacy. HUD should prohibit the HA from terminating assistance for other family members where the family is unable to control a teenage youth. Termination could force a mother to give up her children to stay in the unit.

Comments recommend that the HA should be directed to provide continuing program assistance to remaining family members. Comments claim that HUD does not have statutory authority to allow termination of assistance because of crime by family members (although the law deals with the effect of drug related criminal activity in preferences for admission, and in evictions by an owner).

The program statutes do not contain a comprehensive or exclusive statement of grounds for denial or termination of assistance. HUD has discretion to issue program regulations consistent with statutory requirements (see 42 U.S.C. 3535(d)), including regulations on denial or termination of assistance by the HA for criminal activity by members of an applicant or participant family. These rules are a reasonable exercise of HUD's rulemaking authority. The rules promote significant national and program objectives, including the critical struggle against violent or drug-related crime.

By law and this rule, Section 8 owners may terminate tenancy for certain drug-related or other criminal activity by members of the assisted household and its guests. (42 U.S.C. 1437f(d)(1)(B)(iii); § 982.310(c)) Under this rule, the statutory grounds for eviction by the owner under the lease because of criminal activity substantially overlap the regulatory grounds for termination of program assistance by the HA because of such activity.

In addition, an owner may evict for serious or repeated violation of the

assisted lease. Under this rule, the HA may terminate program assistance for such violation. (§ 982.551(e); § 982.552(b)) Thus, in addition to the provisions which specifically and separately allow the HA to terminate for criminal activity (§ 982.553), the HA may terminate assistance for criminal activity that is a serious or repeated violation of the assisted lease.

The final rule provisions on criminal activity are largely the same as provisions of the prior program regulations, with a few technical revisions and editorial changes. The prior regulations concerning termination of certificate or voucher assistance because of criminal activity were published on July 11, 1990 (at 55 FR 28538). The issues considered by HUD in adoption of the prior rule are discussed at length in the Preamble to that publication. In particular, the Preamble discusses a number of the issues again raised by comments on the present rule. Points discussed in that Preamble need not be repeated here.

The rule gives the HA discretion to terminate assistance for criminal activity. However, the rule does not direct the HA to terminate assistance in any particular case. The HA has therefore the power to adopt and implement local policies, and to decide the application of local policies to particular cases.

The rule confirms that the HA has discretion to consider all the circumstances of each case. (§ 982.552(c)(1)) In exercise of its discretion, the HA may consider the character of the crime. The HA may also consider whether family members have participated in, colluded in, or benefited from criminal activity, and the impact of any termination on other family members, including children. The HA may also properly consider the broader effects of HA action or non-action on the program and community, including:

- How termination of assistance for criminal activity by assisted families may affect or discourage criminal activity in the community.
- The effect of HA termination policy on the Section 8 program, and the ability of program families to find good housing.

Comments suggest that HUD should not merely allow the HA to consider "all" circumstances of each case, but should require that the HA consider all the circumstances. This comment is not adopted. In this rule, HUD does not enumerate or prescribe all the factors that can or should be considered by the HA. Rather, the rule confirms that the HA has ample discretion to consider the

factors of a particular case. Given this discretion, the HA should have flexibility to make a practical determination and consideration in particular cases. The HA exercise of discretion should not be paralyzed, and opened to challenge by mandating consideration of "all" circumstances in "all" cases.

As under HUD's prior rule, this rule provides that a PHA may deny or terminate assistance for drug-related or violent criminal activity:

"if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted". (§ 982.553(c))

Comments endorse the use of this standard for termination or denial of program assistance. The Department has previously noted that:

"the (HA) is not being asked to adjudicate guilt, but rather whether, under a civil standard of preponderance of the evidence, a family member, in fact, is engaging in certain activities. It is the fact of the activity rather than assessment of criminal liability that is at issue." (55 FR 28540, third column)

The HA may deny or terminate assistance in the program because of criminal activity by any member of the "family". (§ 982.553(a)) By contrast, an owner may evict the assisted tenant for criminal activity by any member of the "household", a guest or another person under the tenant's control. (§ 982.310(c)) In addition to the family (i.e., the subject of program assistance), the "household" may include a live-in-aide.

Comments recommend that the rule should also allow the HA to terminate assistance because of drug-trafficking (manufacture, sale, or distribution) by a live-in-aide (who resides in the unit for care of a disabled or elderly person). This recommendation is not adopted. The HA may, however, terminate assistance to the family if drug-trafficking by the live-in-aide (a member of the "household") is a serious or repeated violation of the assisted lease. Moreover, the HA may withdraw or deny approval for continued residence by the live-in-aide in the assisted unit.

Under the prior and proposed rule, the HA may deny or terminate assistance if a crime by a family member is classed as a "felony" under federal or State law (but not for a crime classed as a misdemeanor or other non-felony category). This limitation was intended to reach types of criminal activity treated as very serious objectionable behavior, as identified by Congress or State legislators. (See discussion at 55 FR 28542) Comments suggest some

uncertainty as to the meaning or applicability of this limitation.

After reconsideration, HUD has revised the rule to cover violent or drug-related crime by family members, without regard to whether a crime is technically classed as a felony. HUD believes that there may be more confusion than benefit in distinguishing between felony and misdemeanor crimes as grounds for HA denial or termination of assistance.

The felony-misdemeanor distinction creates a technical discrepancy between drug crimes that may be cause for eviction, as opposed to drug crimes that are grounds for termination of assistance. The statute provides that "drug-related criminal activity" is grounds for eviction of the assisted tenant by the owner (or for denial of federal preference to an applicant). In the law, this term is defined to cover "illegal" drug dealing or drug-use, without regard to whether the illegal activity is formally classed as a felony. (42 U.S.C. 1437f(f)(5)) Under the final rule, the HA may also terminate assistance for "illegal" drug-related activity. The same definition of "drug-related criminal activity" is now used for both purposes (eviction by an owner or termination of assistance by the HA).

#### 5. Fraud or Other Program Violation

The proposed rule would have provided that the HA could deny or terminate assistance if the family had committed any "fraud" in connection with a federal housing program. The final rule provides that the HA may deny or terminate assistance at any time if any member of the family commits "*fraud, bribery or any other corrupt or criminal act*". (§ 982.552(b)(5)) The HA may deny or terminate assistance whether or not such criminal act occurred while the family was participating in the tenant-based program. The rule provides that such criminal act is a breach of family obligations under the program. (§ 982.551(k))

#### 6. Debt or Reimbursement

The HA may "at any time" deny or terminate assistance:

—If a family currently "owes" money to the HA (in connection with Section 8 or public housing), or has not reimbursed amounts the HA paid a Section 8 owner for family rent or damage.

—If the family breaches an agreement to pay such amounts to the HA. (§ 982.552(b)(6) to (8))

Comments state that HUD should not allow an HA to deny assistance because

of family debt to the HA. Comments claim that the rule will allow arbitrary terminations, and that the HA could terminate assistance without regard to the statute of limitations.

In HUD's view, the family is and should be held responsible for its own program debts to the HA, or for claims the HA paid to a Section 8 owner. Denying Section 8 assistance because of monies owed or Section 8 claims paid in connection with the Section 8 or public housing programs under the U.S. Housing Act of 1937 is not arbitrary, but bears a legitimate and logical connection to the HA responsibility for administration of the Section 8 program. Furthermore, the denial is based on a specific determination of law and fact. Contrary to the comment, the rule does not allow the HA to deny assistance for a debt to an HA that is barred by the statute of limitations. By definition, an amount the family "currently owes" is not barred by the statute of limitations.

#### 7. Family Self-Sufficiency

The proposed rule would have provided that the HA may deny or terminate assistance if a family participating in the FSS program fails to comply with the FSS contract of participation. Comments suggest that the rule should specify that the HA may only terminate assistance if the family violates the FSS contract "without good cause", in accordance with the 1992 FSS law. (42 U.S.C. 1437u(c)(1), as amended by § 106(d)(2) of Pub. L. 102-550, 10/28/92 at 106 Stat. 3685) In accordance with this recommendation, the rule is amended to explicitly reflect this statutory requirement. (§ 982.552(b)(9)) With this change, the provision conforms to the existing FSS rule, which provide that the HA may terminate the FSS contract if the FSS family fails to comply "without good cause" with the FSS contract of participation. (§ 984.303(b)(5))

Comments claim that termination of family participation because of FSS violation may cause homelessness, and that the family may drop out of FSS because of the lack of FSS services. Families in the FSS program must comply with Section 8 and FSS obligations. However, HUD does not expect that many families will be terminated from the Section 8 program for breach of FSS obligations. However, if the HA terminates assistance for a family, another family can enter the program, and benefit from housing assistance and FSS services.

## 8. Abuse or Violence Against HA Personnel

The final rule provides that the HA may deny or terminate assistance if the family has engaged in or threatened abuse or violent behavior toward HA personnel. (§ 982.552(b)(10))

### B. Procedures for Informal Review or Hearing

#### 1. Applicants

In the proposed rule, HUD proposed to remove the existing regulatory distinction between "hearing" procedures for participants, and "review" procedures for applicants.

Some comments endorse this change. These comments note that the appeal process has serious consequences for the family, and assert that the greater protection of a "hearing" process is warranted. The change avoids confusion on the appropriate procedure for review of the HA decision.

Other comments strongly object to the proposed change extending "hearing" requirements to HA decisions concerning program applicants. These comments recommend that HUD should retain informal review for applicants. "Hearings" are unwieldy and time consuming. The change proposed by HUD would create bottlenecks and increase HA administrative costs. HAs would need additional professional, stenographic and clerical staff to conduct applicant hearings.

From the comments, it appears that some HAs voluntarily operate hearing procedures that exceed HUD requirements, and are more burdensome and expensive than needed to comply with minimum hearing requirements prescribed by HUD. The HAs appear to assume that "hearings" for applicants would be conducted under the more elaborate processes used for program participants, even if those processes exceed HUD requirements.

In the final rule, HUD has decided to retain the existing regulatory distinction between informal review procedures for applicants and hearing procedures for program participants. The HA must give the opportunity for informal review of a decision denying assistance to an applicant. The review procedures under the final rule are essentially unchanged from the procedures under the old rules for the tenant-based programs. The HA informal review procedures must comply with the following elements:

—The review may be conducted by any person or persons designated by the HA. However, the HA reviewer may not be a person who made or approved the decision under review or a subordinate of this person.

—The applicant may present written or oral objections.

—The HA must notify the applicant of the HA final decision after informal review. The notice must include a brief statement of the reasons for the decision. (§ 982.554(b))

On consideration of the comments, HUD finds that there is insufficient reason to change the existing procedures by extending hearing processes to applicants. The nature and justification for the existing review and hearing requirements is discussed at length in the preamble of the 1984 rule that originally promulgated these procedures. (49 FR 12215, 12224–12230)

Under the HUD rules, there is a separate procedure for review of an HA decision that a family does not qualify for a preference claimed by the family. (§ 982.210(d)(1); 59 FR 36688, July 18, 1994) Under this procedure, the applicant has the right to meet with an HA representative to review the HA determination. The meeting may be conducted by a person designated by the HA. The designated HA representative may be an officer or employee of the HA, including the person who made or reviewed the determination or a subordinate employee. The HA preference decision is not subject to the informal review process for an HA decision denying assistance to an applicant. (Now at § 982.555)

Comments recommend that the HA should be required to use the same procedure on review of denial of preference as for a denial of assistance. The comments assert that preference is the most important factor in determining whether an applicant gets subsidy, and should have the same procedural protection as other HA decisions on applicant eligibility.

In the final rule, HUD has retained the existing procedures granting a family the opportunity to meet with an HA representative to review an HA preference determination. This procedure has been used since 1988 to review denial of a federal preference. (See revision of § 882.216(k) at 53 FR 1122, 1155, column 3, January 15, 1988) In 1994, this procedure was extended to review of an HA decision denying a federal preference, ranking preference or local preference. (See § 982.210(d)(1) at 59 FR 36688)

Since the beginning, HA decisions to grant or deny preference have been subject to a separate review process, not to the informal review procedure used to review denial of assistance to the applicant. In adopting this process, the

Department noted that the notice and opportunity for meeting:

"strikes an appropriate balance among the competing interests involved in the denial of a preference. On the one hand, this approach recognizes the importance of qualification for a preference in securing housing assistance at the earliest time, by establishing a mandatory mechanism for the prompt resolution of factual issues and concerns. On the other hand, use of this degree of informal procedure reflects the Department's belief that the denial of a preference—which has the effect of prolonging an applicant's wait for housing assistance—is not of such magnitude as to justify imposition of the administrative burden on (HAs) \* \* \* that are inherent in a more formal process". (53 FR 1122, 1140. For full discussion, see section X of preamble ("Informal Review of Federal Preference Denials" at *Id.*))

The rule provides that the HA administrative plan must state the HA procedures for conducting an informal review for applicants or an informal hearing for participants. (§ 982.54(d)(12) and 13; § 982.554(b); § 982.555(e)(1))

#### 2. Participant—Informal Hearing Hearing—When Required

The HA must offer a hearing for certain HA determinations "relating to the individual circumstances of a participant family". The hearing is held to consider whether HA decisions related to the family circumstances "are in accordance with the law, HUD regulations and HA policies". The rule lists the cases when the HA must offer a hearing, and cases when a hearing is not required.

The HA must provide the opportunity for a hearing on:

- An HA determination of the family's income.
- An HA determination of the family unit size for the family under the HA subsidy standards.
- An HA determination of the appropriate utility allowance for the family from the HA utility allowance schedule.
- An HA determination to deny or terminate assistance because of family actions.
- An HA determination to terminate assistance because the family has been absent from the unit for longer than the maximum period permitted under HA policy and HUD rules.
- In the certificate program, an HA determination that the family's unit is too big. (§ 982.555(a)(1)).

The HA is not required to grant a hearing for HA discretionary administrative determinations or for general policy issues or class grievances. (§ 982.555(b) (1) and (2)) The final rule provides that a hearing is not required

for an HA determination not to approve an extension or suspension of the certificate or voucher term. The HA has discretion whether to grant an extension or suspension. (§ 982.303 (b) and (c))

Comments object to the regulatory definition of when hearings are required, and the purpose of the HA hearing. The comment objects to the provision specifying that hearing procedures apply to HA decisions regarding individual family circumstances challenged as not in accordance with law, regulation or rules. The comment states that there should be a uniform set of procedures and appeal rules, and recommends that HUD should eliminate the distinction between types of decision for which there is or is not an appeal right.

HUD believes that the rule appropriately defines the proper role of the administrative hearing process. The terms of this definition largely follow requirements under existing program regulations concerning the purpose and subject matter of participant hearings. (See 49 FR 12215, 12226; March 29, 1984) The Department has noted that:

“The hearing process \* \* \* is designed to assure that decisions by the (HA) with respect to a participant family comply with applicable rules. The hearing process does not displace the regular (HA) administrative process for matters committed to [HA] discretion and management judgment”. (49 FR 12226)

Comments state that the HA should not be required to grant a hearing for determination of the utility allowance. An HA establishes a utility allowance schedule for use in its program. To determine the assistance payment for a particular family, the HA uses the utility allowance (from the established schedule) for the dwelling unit actually leased by the family.

The rule is revised to clarify, as intended, that the HA is not required to grant a hearing on establishment of the HA schedule of utility allowances for families in the program.

(§ 982.555(b)(3)) The rule provides (as proposed) that the HA must grant a hearing on the HA determination, based on the individual family circumstances, of the appropriate utility allowance for the particular family from the HA utility allowance schedule. (§ 982.555(a)(1)(ii))

The proposed rule would have carried forward a prior rule provision that required the HA to grant a family opportunity for an informal hearing before terminating assistance under an outstanding HAP contract. Comments ask HUD to clarify that the HA is not required to grant an advance hearing to redetermine the family's share of the rent at a reexamination (including a

reduction of subsidy to zero by operation of the Section 8 subsidy formulas). In response, the rule is revised to specify (§ 982.555(a)(2)) that the HA must grant an advance hearing before terminating payments under an outstanding HAP contract in these three cases:

- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the HA subsidy standards, or the HA determination to deny the family's request for an exception from the standards.
- A determination to terminate assistance because of the family's action or failure to act.
- A determination to terminate housing assistance payments because the participant family has been absent from the assisted unit for longer than the maximum period permitted under HA policy and HUD rules.

#### *Notice to Participant*

Comments recommend that the HA should be required to notify the family of the reasons for termination of assistance. The rule provides that the HA must notify the family of its right to request a hearing on a decision to deny or terminate assistance. The notice must include a brief statement of reasons for the HA decision. (§ 982.555(c)(2))

Other comments object to the administrative burden and cost to notify the family of the right to a hearing because of changes in family income or family size. When the HA determines family income or “family unit size” (the appropriate number of bedrooms for the family), the HA must give notice that the family may ask the HA to explain the basis of the HA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision. (§ 982.555(c)(1)) Notice of the family right to a hearing can be included in the HA reexamination notice (requesting information for a reexamination), or in the HA notice of the determination after reexamination. The HA does not have to serve or mail any separate notice. For this reason, the process of giving the notice to the family does not require any substantial additional cost or administrative burden.

#### *Time To Request Hearing*

Comments recommend that HUD should specify the minimum period to appeal HA decisions. The comments state that HUD should allow HAs to establish a short minimum appeal time where assistance continues during the appeal, but should require that HAs

allow one year to request a hearing if the participant is seeking assistance during the appeal.

The HA gives the family notice of the right to a hearing. (§ 982.555(c) (1) and (2)) The HA is required to adopt hearing procedures in its administrative plan. (§ 982.54(d)) In its hearing procedures, the HA can establish HA requirements for requesting a hearing, including any deadlines. If the HA decides to terminate assistance for a family, the HA notice must state the deadline for the family to request an informal hearing. (§ 982.555(c)(2)(iii))

In this rule, HUD does not set minimum or maximum periods for requesting a hearing. Such details are best left to determination by the HA. The HA may decide to establish different deadlines for different circumstances. The HA is in a better position to judge the practicality and effect of its hearing policies, and to modify its procedures in the light of local experience.

#### *Hearing: Family Right to Examine HA Documents*

The new rule adds one element to hearing procedures under the old rule. The rule now grants the family a right to pre-hearing discovery of HA documents, including records and regulations, that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. (§ 982.555(e)(2)(i))

These new discovery requirements are essentially the same as the public housing discovery requirements promulgated by HUD under Section 6(k) of the 1937 Housing Act. (42 U.S.C. 1437d(k))

Some comments approve allowing the family to examine and copy HA documents. Other comments object to allowing the family to preview HA evidence, and claim that this gives the family an unfair advantage. Comments recommend that the HA should have the right to see family documents.

The final rule retains without change the proposed provisions permitting family examination of HA documents prior to hearing. (§ 982.555(e)(2)(i)) This process helps the family present its case and respond to HA documents and argument. The discovery process can support the basic purpose of the hearing—to produce an accurate determination of the points at issue.

As suggested by comment, the final rule adds a new provision that grants the HA a parallel right to pre-hearing examination of relevant family documents. The family would be required to produce the documents at the HA offices. (§ 982.555(e)(2)(ii))

The rule provides that the HA may not rely on a document not produced in response to the family's request. Comments agree with this provision. Advance disclosure helps the family prepare for the hearing. Other comments indicate that the rule should provide a stronger sanction for the HA failure to disclose a document, by prohibiting the HA from raising any issue, fact or claim concerning the document.

In the final rule, the sanctions provision is retained as proposed. The HA may not rely on a document withheld from disclosure. Similarly, the rule provides that the family may not rely on a document not produced at request of the HA. Any additional sanctions for non-disclosure are left to the authority and judgment of the hearing officer, and should not be prescribed in the rule. The hearing officer may tailor the character and severity of the sanction to the facts of the immediate case.

At request of the other party, the HA or family must produce documents that are "directly relevant" to the hearing. Comments recommend that the rule designate what documents must be released in discovery with more specificity. HUD believes that the proposed standard is an adequate guide. As under any such standard, there can be disputes at the margin whether particular documents are directly relevant to the issues at the hearing. HUD is unable to devise a better standard, and no such standard is suggested in the comments.

Comments express concern that the family may lose documents. Under the rule, the HA can devise appropriate procedures for inspection of documents, including provision for supervised inspection. The HA is not required to allow the family to remove documents or files from the HA offices. The HA could, if desired, provide document copies to minimize the risk of losing originals or corruption of HA files.

The rule provides that the family may copy HA documents "at the family's expense". (§ 982.555(e)(2)(i)) Comments suggest that the HA should not be permitted to charge the family for copying documents. The comment is not adopted. The HA may work out appropriate local policies on copying charges (for example, policies that allow free copying of a limited number of pages).

#### *Hearing Officer*

As in the past, the rule provides that a hearing may be conducted by any person or persons designated by the HA, other than a person who made or approved the decision under review or

a subordinate of this person. (§ 982.555(e)(4)(i))

Comments recommend that the hearing officer should not be a person connected to the HA. The comments state that a hearing officer who is an HA employee will tend to support a colleague's decision, and may be familiar with the issues and complaint.

The recommendation is not adopted. The designated hearing officer is responsible for exercising an independent and good faith judgment on the issues presented. Factual determinations concerning the individual family must be based on evidence presented at hearing. An HA employee or officer can render a fair and objective judgment. Conversely, precluding use of HA employees or officers will generally increase the expense of the hearing process. (For full discussion of the basis of the current provisions, see 49 FR 12229-12230)

#### **X. Section 8 Certificate Program: Project-Based Assistance (PBC)**

##### *PBC: Moving the Rule*

The regulations for the Project-based Certificate (PBC) Program have been moved to a separate subpart, 24 CFR part 983, since the tenant-based and project-based programs are very different.

##### *PBC: Reducing Program Complexity and HUD Involvement; Initial HAP Contract Term*

Comments state that the PBC program is difficult for HAs and HUD to administer, and operationally complex for all parties. The extent and timeliness of HUD review is criticized. Comments state that the PBC regulations inappropriately require HUD PBC reviews similar to the HUD reviews for applications for long term subsidy contracts under the Section 202 and Section 8 new construction programs. Comments note that the level of HUD activity for the PBC program is not justified by a five-year subsidy commitment.

HUD agrees that the HUD oversight is excessive for a five-year subsidy commitment, especially considering the limited HUD field office staff capacity to perform PBC reviews. The final rule significantly decreases HUD review responsibilities for the PBC program, and simplifies program administration. The requirements for a HUD cost containment review and intergovernmental review have been deleted. Initial contract rents for non-HUD insured, non-HA owned PBC projects will be set by the HA, based on appraisals conducted by a State certified

general appraiser. The costs of the PBC appraisal will come from the administrative fees already paid to HAs. The HUD 2530 previous participation requirement has also been eliminated, and responsibility for PBC historic preservation and environmental review responsibilities have been assumed by States and units of local government pursuant to section 305(b) of the Multifamily Housing Property Disposition Reform Act of 1994. In addition, the rule eliminates the requirement for a HUD-approved HA schedule of leasing. The final rule also limits the initial PBC HAP contract term to five years, the typical funding term for new units.

Other changes have been made throughout the rule to delete requirements on matters which do not need to be regulated.

##### *PBC: Maximum Number of PBC Units; Application to Implement a PBC Program*

Comments suggested that HUD should allow project-basing in the voucher program, and should increase the percentage of certificate units which may be project-based. These suggestions have not been adopted. The statute does not permit project-basing of voucher units. The statute does not require that HUD permit project basing for more than 15 percent of assistance under the certificates (or 30 percent for rehabilitation of certain State-assisted units).

In order to further simplify program administration and in recognition that the ACC no longer lists the number of units by bedroom size, the references to the 15 and 30 percent limits in § 983.702 and § 983.703 have been revised to delete reference to "units under ACC". The 15 and 30 percent limits apply to the number of budgeted certificate units, not the number of units under ACC.

Section 983.3 has also been revised to delete the requirement that HAs indicate the bedroom sizes of the PBC units and identify a funding source for purposes of determining the maximum PBC HAP contract term. When approving the HAP contract term for PBC units, the HA must ensure that the contract authority for the funding source exceeds the estimated annual housing assistance payments for all tenant-based and project-based HAP contracts funded from the funding source.

##### *PBC: Funding*

Several comments recommend that HUD provide special funding for the PBC program. If HUD specifically allocated funds for PBC, HAs would be

coerced to implement a PBC program in order to receive funds. Fearing that HUD might in fact be considering setting aside funds for the PBC program, Congressional members instructed HUD in March 1988 that fair share allocations of certificate funding should be distributed as done in the past without regard to the PBC program, and "whether or not HAs decide to attach Section 8 existing contracts to specific buildings should not affect HUD's regular selection procedure".

*PBC: Ineligible Housing: Use of State, Local, and Federal Subsidies*

Many comments object to the proposed prohibition against selecting housing for the PBC program which in the past five years received (or will receive) local or State government below-market mortgage interest subsidy, construction or rehabilitation subsidy, or project-based rent subsidy. Comments state that subsidies from many sources are often necessary to construct or rehabilitate low-income housing. Local and State subsidies may result in lower rents and shallower federal subsidies. One comment recommended that any subsidy restrictions should be limited to programs that prohibit rents in excess of fixed percentages of income equal to or less than the limits used for the public housing and Section 8 programs. In response to these public comments, HUD is deleting the proposed subsidy prohibition against providing PBC for a project that has received subsidy in the last 5 years.

Comments objected to the proposed provision disqualifying housing for the PBC program if the rehabilitation or construction is begun before execution of the Agreement to Enter Into a HAP Contract (Agreement). Comments pointed out that developers often begin construction or rehabilitation work prior to Agreement in order to secure tax credits and other funding commitments. HUD has limited flexibility in this area. The statute requires that the owner "agree" to construct or perform the qualifying rehabilitation. Thus, an Agreement must be executed prior to any construction or the qualifying rehabilitation. The final rule continues to restrict all pre-Agreement construction or rehabilitation. Although HUD has latitude under the statute to allow commencement of rehabilitation in excess of the \$1000 per unit qualifying rehabilitation threshold, HUD has decided not to exercise this authority since owners may begin rehabilitation early to circumvent compliance with the PBC relocation requirements and other federal

requirements such as Davis-Bacon wage rates.

The final rule also deletes the prohibition against selecting HUD-owned properties for the PBC program.

*PBC: Disabled Issues*

Comment suggested language changes to use phrase "disabled" instead of "handicapped". This comment is accommodated throughout Part 983. In addition, the rule has been clarified to state that accessibility improvements which are counted towards the \$1000 per unit rehabilitation eligibility threshold are limited to accessibility improvements to the property required by Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988. (§ 983.8)

*PBC: Relocation*

There was one comment on the revised PBC relocation requirements. This comment was addressed in the final PBC relocation rule published in the **Federal Register** on June 6, 1994. The final rule relocation text is incorporated into this rulemaking and is located in § 983.10.

*PBC: Owner Selection Policies*

Comment questioned the need for HUD to approve owner PBC tenant selection policies and notify families of the reasons why they were not selected. Comment states that HUD has implemented the statute verbatim and requests that HUD provide mandatory standards concerning tenant suitability identical to those contained in the public housing rule at 24 CFR 960.205. Comment erroneously states that standards are necessary since families rejected for a PBC unit cannot seek other housing assisted in the tenant-based certificate program. The comment is wrong. A family rejected by a PBC owner does not lose eligibility for, or position on, the waiting list for tenant-based assistance.

HUD agrees that a requirement for HUD approval of owner PBC tenant selection policies is not necessary. Since HUD approval of the owner's policies in this area is not mandated by the statute, the final rule does not include the requirement that the owner's tenant selection policy be submitted to the HUD field office for review and approval. HUD declines to impose additional regulatory requirements in this area.

*PBC: Contract Rents*

The comments concerning initial contract rents and contract rent adjustments will be addressed in a later rulemaking. Today's rulemaking does

not modify current program requirements in these areas.

*PBC: Organization of the Rule*

The section numbers have been revised since the PBC rule is now part 983 instead of a subpart under part 882. In addition, the housing quality standards for rehabilitation and new construction units were combined under one section instead of being contained in separate sections. Likewise, the site and neighborhood standards for rehabilitation and new construction units which were formally contained in separate sections were combined under one section.

**XI. Findings and Certifications**

*A. Impact on the Economy*

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*B. Impact on the Environment*

A Finding of No Significant Impact (FONSI) with respect to the environment was made in connection with the proposed rule in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Since the provisions of this final rule with respect to the effect on the environment are not changed from the proposed rule, the original FONSI is still valid. The FONSI is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

*C. Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have impact on States or their political subdivisions only to the extent required by the statute being implemented. Since the rule merely carries out a statutory mandate and does

not create any new significant requirements, it is not subject to review under the Executive Order.

#### D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order.

#### E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on housing authorities or housing owners.

#### F. Regulatory Agenda

This rule was listed as sequence number 1531 under the Office of the Assistant Secretary for Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on May 8, 1995 (60 FR 23368, 23403) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

#### Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St. SW., Washington, DC 20410.

#### List of Subjects

##### 24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

##### 24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

##### 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

##### 24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, Parts 882 and 887 of chapter VIII and Parts 982 and 893 of Chapter IX of title 24 of the Code of Federal Regulations are amended as follows:

1. The heading for part 882 is revised to read as follows:

#### **PART 882—SECTION 8 CERTIFICATE AND MODERATE REHABILITATION PROGRAMS**

2. The authority citation for part 882 is revised to read as follows:

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

3. Section 882.101 is amended by revising paragraph (b), and by adding new paragraphs (c) and (d), to read as follows:

##### **§ 882.101 Applicability and scope.**

\* \* \* \* \*

(b) *Existing Housing* means housing that is in Decent, Safe, and Sanitary condition. Existing Housing does not include public housing.

(c) *Certificate program.* (1) Program regulations for the Section 8 tenant-based certificate and voucher programs are located at 24 CFR part 982. Program regulations for the Section 8 project-based certificate program are located at 24 CFR part 983.

(2) The following provisions of subpart A of this part are applicable to the Section 8 certificate program: §§ 882.101, 882.106, 882.108, 882.110, and paragraphs (m), (n), (o), (p) and (q) of § 882.109.

(3) In applying provisions of subpart A of this part, the definitions in § 882.102 are applicable to the Section 8 certificate program.

(4) Subparts C and F of this part are applicable to the Section 8 certificate program.

(5) Subpart G of this part is applicable to the Section 8 project-based certificate program.

(d) *Moderate rehabilitation programs.* (1) Subparts D and E of this part are applicable to the Section 8 Moderate Rehabilitation Program. For applicability of other part 882 provisions to this program, see § 882.401(d).

(2) Subpart H of this part is applicable to the Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals. For applicability of other part 882 provisions to this program, see references in subpart H of this part.

**§§ 882.103, 882.104, 882.105, 882.107, 882.116, 882.117, 882.119 and 882.121 [Removed and Reserved]**

4. In subpart A of this part 882, the following sections are removed and reserved: §§ 882.103, 882.104, 882.105, 882.107, 882.116, 882.117, 882.119 and 882.121.

##### **§ 882.123 [Amended]**

5. In § 882.123, paragraphs (a) through (d), and paragraph (f), are removed and reserved, and paragraph (i) is removed.

**§§ 882.201–882.211, 882.213, 882.215, 882.216, and Appendix I of Subpart B [Amended]**

6. In subpart B of this part 882, §§ 882.201 through 882.211, 882.213, 882.215, and 882.216 are removed and reserved, and Appendix I is removed.

7. Subpart G of this part 882 is amended by revising § 882.701, to read as follows:

##### **§ 882.701 Purpose and applicability.**

Subpart G of this part states requirements concerning initial and adjusted Contract Rents in the Section 8 project-based certificate program. Other program regulations for the Section 8 project-based certificate program are located at 24 CFR part 983.

**§§ 882.702 through 882.713 [Removed and Reserved]**

8. Sections 882.702 through 882.713 are removed and reserved.

**§§ 882.716 through 882.759 [Removed]**

9. Sections 882.716 through 882.759 are removed.

#### **PART 887—HOUSING VOUCHERS**

10. The authority citation for part 887 is revised to read as follows:

**Authority:** 42 U.S.C. 1437f(o) and 3535(d).

11. In subpart A of this part 887, § 887.3 is revised, to read as follows:

##### **§ 887.3 Scope and applicability.**

(a) The provisions of this part apply to the Section 8 voucher program authorized by section 8(o) of the 1937 Act. This part states voucher program requirements concerning the payment standard and housing assistance payment, and concerning special housing types. Other program regulations for the Section 8 tenant-based certificate and voucher programs are located at 24 CFR part 982.

(b) The definitions in § 887.7 are applicable in applying the provision of this part.

**§ 887.5 [Removed]**

12. Section 887.5 is removed.

**Subparts B through G and Subpart I  
[Removed and Reserved]**

13. Subparts B through G and Subpart I of this part 887 are removed and reserved.

**Subpart L [Removed]**

13a. Subpart L of this part 887 is removed.

**PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM**

14. The authority citation for part 982 is revised, to read as follows:

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

15. In part 982, Subpart A is revised; subparts B, C, D, G, H, I, J, and L are added; and subparts F, K, and M are reserved, to read as follows:

**Subpart A—General Information**

Sec.

982.1 Tenant-based programs: Purpose and structure.

982.2 Applicability.

982.3 HUD.

982.4 Definitions.

982.5 Notices required by this part.

**Subpart B—HUD Requirements and HA Plan for Administration of Program**

982.51 HA authority to administer program.

982.52 HUD requirements.

982.53 Equal opportunity requirements.

982.54 Administrative plan.

**Subpart C—Funding and HA Application for Funding**

982.101 Allocation of funding.

982.102 HA application for funding.

982.103 HUD review of application.

**Subpart D—Annual Contributions Contract and HA Administration of Program**

982.151 Annual contributions contract.

982.152 Administrative fee.

982.153 HA responsibilities.

982.154 ACC reserve account.

982.155 Administrative fee reserve.

982.156 Depository for program funds.

982.157 Budget and expenditure.

982.158 Program accounts and records.

982.159 Audit requirements.

982.160 HUD determination to administer a local program.

982.161 Conflict of interest.

982.162 Use of HUD-required contracts and other forms.

982.163 Fraud recoveries.

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**Subpart F—[Reserved]****Subpart G—Leasing a Unit**

982.301 Information when family is selected.

982.302 Issuance of certificate or voucher; Requesting HA approval to lease a unit.

982.303 Term of certificate or voucher.

982.304 Illegal discrimination: HA assistance to family.

982.305 HA approval to lease a unit.

982.306 HA disapproval of owner.

982.307 Owner responsibility for screening tenants.

982.308 Lease.

982.309 Term of assisted tenancy.

982.310 Owner termination of tenancy.

982.311 When assistance is paid.

982.312 Absence from unit.

982.313 Security deposit; Amounts owed by tenant.

982.314 Move with continued tenant-based assistance.

982.315 Family break-up.

**Subpart H—Where Family Can Live and Move**

982.351 Overview.

982.352 Eligible housing.

982.353 Where family can lease a unit with tenant-based assistance.

982.354 Portability: Administration by initial HA outside the initial HA jurisdiction.

982.355 Portability: Administration by receiving HA.

**Subpart I— Dwelling Unit: Housing Quality Standards, Subsidy Standards, Inspection and Maintenance**

982.401 Housing quality standards (HQS).

982.402 Subsidy standards.

982.403 Terminating HAP contract: When unit is too big or too small.

982.404 Maintenance: Owner and family responsibility; HA remedies.

982.405 HA periodic unit inspection.

982.406 Enforcement of HQS.

**Subpart J—Housing Assistance Payments Contract and Owner Responsibility**

982.451 Housing assistance payments contract.

982.452 Owner responsibilities.

982.453 Owner breach of contract.

982.454 Termination of HAP contract: Insufficient funding.

982.455 Termination of HAP contract: Expiration and opt-out.

982.456 Third parties.

982.457 Owner refusal to lease.

**Subpart K—Rent and Housing Assistance Payment—[Reserved]****Subpart L—Family Obligations; Denial and Termination of Assistance**

982.551 Obligations of participant.

982.552 HA denial or termination of assistance for family.

982.553 Crime by family members.

982.554 Informal review for applicant.

982.555 Informal hearing for participant.

**Subpart M—Special Housing Types—  
[Reserved]****Subpart A—General Information****§ 982.1 Tenant-based programs: Purpose and structure.**

(a) *General description.* (1) The HUD rental voucher program and the HUD rental certificate program provide rent subsidies so eligible families can afford rent for decent, safe, and sanitary housing. Both programs are administered by State, local governmental or tribal bodies called housing agencies (HAs). HUD provides funds to an HA for rent subsidy on behalf of eligible families. HUD also provides funds for HA administration of the programs.

(2) Families select and rent units that meet program housing quality standards. If the HA approves a family's unit and lease, the HA contracts with the owner to make rent subsidy payments on behalf of the family. An HA may not approve a lease unless the rent is reasonable.

(3) In the certificate program, the rental subsidy is generally based on the actual rent of a unit leased by the assisted family. In the voucher program, the rental subsidy is determined by a formula, and is not based on the actual rent of the leased unit.

(4) In the certificate program, the unit rent generally may not exceed a HUD-published fair market rent for rental units in the local housing market. For most families, the subsidy is the difference between the unit rent and 30 percent of adjusted monthly income. In the voucher program, the subsidy for most families is the difference between 30 percent of adjusted monthly income and a "payment standard" that is based on the HUD-published fair market rent. If the unit rent is less than the voucher payment standard, the family pays a smaller share of the rent. If the unit 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 an HA that runs a certificate or voucher program.

(2) Except for project-based assistance under the certificate program (covered in 24 CFR part 983), all assistance under the certificate and voucher programs is "tenant-based". After the family selects

a suitable unit, the HA enters into a contract with the owner to make rent subsidy payments to the owner to subsidize occupancy by the family. The contract only covers a single unit and the specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. In the tenant-based programs, the family may move to another unit with continued assistance so long as the family is complying with program requirements.

#### § 982.2 Applicability.

(a) Part 982 is a unified statement of program requirements for the tenant-based housing assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based programs are the Section 8 tenant-based rental certificate program and the Section 8 rental voucher program.

(b) Unless specifically stated in this part, requirements for both tenant-based programs are the same.

#### § 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.

**Absorption.** In portability, the point at which a receiving HA stops billing the initial HA for assistance on behalf of a portability family. The receiving HA uses funds available under the receiving HA consolidated ACC.

**ACC.** Annual contributions contract. **ACC reserve account** (formerly "project reserve"). Account established by HUD from amounts by which the maximum payment to the HA under the consolidated ACC (during an HA fiscal year) exceeds the amount actually approved and paid. This account is used as the source of additional payments for the program.

**Adjusted income.** Defined in 24 CFR 813.102.

**Administrative fee.** Fee paid by HUD to the HA for administration of the program.

**Administrative fee reserve** (formerly "operating reserve"). Account established by HA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See § 982.155.

**Administrative plan.** The administrative plan describes HA

policies for administration of the tenant-based programs. See Part B of part 982. Section 982.54 describes subjects that must be covered in the administrative plan.

**Admission.** The effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program. This is the point when the family becomes a participant in the program.

**Annual contributions contract (ACC).** A written contract between HUD and an HA. Under the contract HUD agrees to provide funding for operation of the program, and the HA agrees to comply with HUD requirements for the program.

**Annual income.** Defined in 24 CFR 813.106.

**Applicant** (applicant family). A family that has applied for admission to a program, but is not yet a participant in the program.

**Budget authority.** An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in an HA program, budget authority is the maximum amount that may be paid by HUD to the HA over the ACC term of the funding increment.

**Certificate.** A document issued by an HA to a family selected for admission to the rental certificate program. The certificate describes the program, and the procedures for HA approval of a unit selected by the family. The certificate also states the obligations of the family under the program.

**Certificate or voucher holder.** A family holding a voucher or certificate with unexpired search time.

**Certificate program.** Rental certificate program.

**Consolidated annual contributions contract** (consolidated ACC). See § 982.151.

**Contiguous MSA.** In portability, an MSA that shares a common boundary with the MSA in which the jurisdiction of the initial HA is located.

**Continuously assisted.** 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 certificate or voucher program.

**Contract authority.** The maximum annual payment by HUD to an HA for a funding increment.

**Disabled person.** See the definition of *Person with disabilities*.

**Displaced person.** Defined in 24 CFR 812.2.

**Domicile.** The legal residence of the household head or spouse as determined in accordance with State and local law.

**Drug-related criminal activity.** Term means:

(1) Drug-trafficking; or  
(2) Illegal use, or possession for personal use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

**Drug-trafficking.** The illegal manufacture, sale or distribution, or the possession with intent to manufacture, sell or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

**Elderly person.** A person who is at least 62 years of age.

**Eligibility.** See § 982.201.

**Exception rent.** In the certificate program, an initial rent (contract rent plus any utility allowance) in excess of the published FMR. In the certificate program, the exception rent is approved by HUD, and is used in determining the initial contract rent. In the voucher program, the HA may adopt a payment standard up to the exception rent limit approved by HUD for the HA certificate program.

**Fair market rent (FMR).** The rent, including the cost of utilities (except telephone), that would be required to be paid in the housing market area to obtain privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. Fair market rents for existing housing are established by HUD for housing units of varying sizes (number of bedrooms), and are published in the **Federal Register** in accordance with 24 CFR part 888.

**Family.** See 24 CFR 812.2. Family composition is discussed at § 982.201(c).

**Family self-sufficiency program** (FSS program). The program established by an HA to promote self-sufficiency of assisted families, including the provision of supportive services (42 U.S.C. 1437u). See 24 CFR part 984.

**Family unit size.** The appropriate number of bedrooms for a family. Family unit size is determined by the HA under the HA subsidy standards.

**Federal preference.** A preference under federal law for admission of applicant families that are any of the following:

(1) Involuntarily displaced.  
(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless).  
(3) Paying more than 50 percent of family income for rent.

**Federal preference holder.** An applicant that qualifies for a federal preference.

**FMR.** Fair market rent.

**FMR/exception rent limit.** The Section 8 existing housing fair market rent published by HUD headquarters, or any exception rent. In the certificate program, the initial contract rent for a dwelling unit plus any utility allowance may not exceed the FMR/exception rent limit (for the dwelling unit or for the family unit size). In the voucher program, the HA may adopt a payment standard up to the FMR/exception rent limit.

**FSS program.** Family self-sufficiency program.

**Funding increment.** Each commitment of budget authority by HUD to an HA under the consolidated annual contributions contract for the HA program.

**HA. Housing Agency.**

**HAP contract.** Housing assistance payments contract.

**Housing agency (HA).** A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing, including an Indian housing authority (IHA). ("PHA" and "HA" mean the same thing.)

**Housing assistance payment.** The monthly assistance payment by an HA. The total assistance payment consists of:

- (1) A payment to the owner for rent to owner under the family's lease.
- (2) An additional payment to the family if the total assistance payment exceeds the rent to owner. In the certificate program, the additional payment is called a "utility reimbursement".

**Housing assistance payments contract (HAP contract).** A written contract between an HA and an owner, in the form prescribed by HUD headquarters, in which the HA agrees to make housing assistance payments to the owner on behalf of an eligible family.

**Housing quality standards (HQS).** The HUD minimum quality standards for housing assisted under the tenant-based programs. See § 982.401.

**HQS.** Housing quality standards.

**HUD.** The U.S. Department of Housing and Urban Development.

**HUD requirements.** HUD requirements for the Section 8 programs. HUD requirements are issued by HUD headquarters, as regulations, **Federal Register** notices or other binding program directives.

**IHA.** Indian housing authority.

**Indian.** Any person recognized as an Indian or Alaska Native by an Indian Tribe, the federal government, or any State.

**Indian housing authority (IHA).** A housing agency established either:

(1) By exercise of the power of self-government of an Indian Tribe, independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians.

**Initial contract rent.** In the certificate program, the contract rent at the beginning of the initial lease term.

**Initial HA.** In portability, the term refers to both:

(1) An HA that originally selected a family that subsequently decides to move out of the jurisdiction of the selecting HA.

(2) An HA that absorbed a family that subsequently decides to move out of the jurisdiction of the absorbing HA.

**Initial lease term.** The initial term of the assisted lease. The initial lease term must be for at least one year.

**Initial rent to owner.** The rent to owner at the beginning of the initial lease term.

**Jurisdiction.** The area in which the HA 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 HA.

(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 HA. For purposes of part 982, the cooperative is the Section 8 "owner" of the unit, and the cooperative member is the section 8 "tenant".

**Lease addendum.** In the lease between the tenant and the owner, the lease language required by HUD.

**Live-in aide.** Defined in 24 CFR 813.102.

**Local preference.** A preference used by the HA to select among applicant families without regard to their federal preference status.

**Local preference limit.** Ten percent of total annual waiting list admissions to the HA's tenant-based certificate and voucher programs. The local preference limit is used to select among applicants without regard to their federal preference status.

**Low-income family.** Defined in 24 CFR 813.102. (Section 982.201(b) describes when a low-income family is income-eligible for admission to the certificate or voucher program.)

**MSA.** Metropolitan statistical area.  
**1937 Housing Act.** The United States Housing Act of 1937 (42 U.S.C. 1437 and following sections). The HUD tenant-based program is authorized by Section 8 of the 1937 Housing Act (42 U.S.C. 1437f).

**1937 Housing Act program.** Any of the following programs:

(1) The public housing program or Indian housing program.

(2) Any program assisted under Section 8 of the 1937 Act (42 U.S.C. 1437f) (including assistance under a Section 8 tenant-based or project-based program).

(3) The Section 23 leased housing program.

(4) The Section 23 housing assistance payments program. ("Section 23" means Section 23 of the United States Housing Act of 1937 before enactment of the Housing and Community Development Act of 1974.)

**NOFA.** Notice of funding availability.  
**Notice of funding availability (NOFA).** For funding (contract or budget authority) that HUD distributes by competitive process, HUD headquarters invites HA applications by publishing a NOFA in the **Federal Register**. The NOFA explains how to apply for assistance, and the criteria for awarding the funding.

**Operating reserve.** Administrative fee reserve.

**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 HA 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 HA for the family (first day of initial lease term).

**Payment standard.** In the voucher program, an amount used by the HA to calculate the housing assistance payment for a family. Each payment standard amount is based on the fair market rent. The HA adopts a payment standard for each bedroom size and for each fair market rent area in the HA jurisdiction. The payment standard for a family is the maximum monthly subsidy payment.

**PBC.** Project-based certificate program. See 24 CFR part 983.

**Person with disabilities** (disabled person). Defined in 24 CFR 813.102.

**PHA.** Public housing agency. See definition of "housing agency". ("Public housing agency" and "housing agency" mean the same thing.)

**Portability.** Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial HA.

**Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds.

**Program.** The tenant-based certificate program or voucher program.

**Project-based.** Rental assistance that is attached to the structure.

**Project-based certificate program (PBC).** Project-based assistance under 24 CFR part 983, using funding under the consolidated ACC for the HA certificate program.

**Project reserve.** ACC reserve account. See § 982.154.

**Public housing agency (PHA).** A Housing Agency (HA).

**Ranking preference.** A preference used by the HA to select among applicant families that qualify for federal preference.

**Reasonable rent.** A rent to owner that is not more than either:

(1) Rent charged for comparable units in the private unassisted market; or

(2) Rent charged by the owner for a comparable assisted or unassisted unit in the building or premises.

**Receiving HA.** In portability, an HA that receives a family selected for participation in the tenant-based program of another HA. The receiving HA issues a certificate or voucher, and provides program assistance to the family.

**Rental certificate.** Certificate.

**Rental certificate program.** Certificate program.

**Rental voucher.** Voucher.

**Rental voucher program.** Voucher program.

**Rent to owner.** The monthly rent payable to the owner under the lease. Rent to owner includes payment for any services, maintenance and utilities to be provided by the owner in accordance with the lease.

**Residency preference.** An HA 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.

**Special admission.** Admission of an applicant that is not on the HA waiting list, or without considering the applicant's waiting list position.

**Subsidy standards.** Standards established by an HA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions. See definition of "family unit size".

**Suspension.** Stopping the clock on the term of a family's certificate or voucher, for such period as determined by the

HA, from the time when the family submits a request for HA approval to lease a unit, until the time when the HA approves or denies the request.

**Tenant.** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

**Tenant-based.** Rental assistance that is not attached to the structure.

**Tenant rent.** In the certificate program, total tenant payment minus any utility allowance.

**Total tenant payment.** In the certificate program, defined in 24 CFR 813.102 and 24 CFR 813.107.

**Unit.** Dwelling unit.

**United States Housing Act of 1937 (1937 Housing Act).** The basic law that authorizes the public and Indian housing programs, and the Section 8 programs. (42 U.S.C. 1437 and following sections.)

**Utility allowance.** Defined in 24 CFR 813.102.

**Utility reimbursement.** In the certificate program, the amount, if any, by which any utility allowance for family-paid utilities or other housing services exceeds the total tenant payment.

**Very low-income family.** Defined in 24 CFR 813.102.

**Violent criminal activity.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**Voucher (rental voucher).** A document issued by an HA to a family selected for admission to the voucher program. The voucher describes the program, and the procedures for HA approval of a unit selected by the family. The voucher also states the obligations of the family under the program.

**Voucher program.** Rental voucher program.

**Waiting list admission.** An admission from the HA waiting list.

#### § 982.5 Notices required by this part.

Where part 982 requires any notice to be given by the HA, the family or the owner, the notice must be in writing.

#### Subpart B—HUD Requirements and HA Plan for Administration of Program

##### § 982.51 HA authority to administer program.

(a) The HA must be a governmental entity or public body with authority to administer the tenant-based program. The HA must provide HUD evidence, satisfactory to HUD, of such authority, and of the HA jurisdiction.

(b) The evidence submitted by the HA to HUD must include enabling

legislation and a supporting legal opinion satisfactory to HUD. The HA must submit additional evidence when there is a change that affects its status as an HA, authority to administer the program, or the HA jurisdiction.

##### § 982.52 HUD requirements.

(a) The HA 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 HA must comply with the consolidated ACC and the HA's HUD-approved applications for program funding.

##### § 982.53 Equal opportunity requirements.

(a) Participation in the tenant-based program requires compliance with all equal opportunity requirements imposed by contract or federal law, including applicable requirements under:

(1) The Fair Housing Act, 42 U.S.C. 3610–3619 (implementing regulations at 24 CFR parts 100, *et seq.*);

(2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (implementing regulations at 24 CFR part 1);

(3) The Age Discrimination Act of 1975, 42 U.S.C. 6101–6107 (implementing regulations at 24 CFR part 146);

(4) Executive Order 11063, Equal Opportunity in Housing (1962), as amended, Executive Order 12259, 46 FR 1253 (1980), as amended, Executive Order 12892, 59 FR 2939 (1994) (implementing regulations at 24 CFR part 107);

(5) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (implementing regulations at 24 CFR part 8); and

(6) Title II of the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.*

(b) For the application of equal opportunity requirements to an Indian Housing Authority, see 24 CFR 950.115.

(c) The HA must submit a signed certification to HUD of the HA's intention to comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act.

##### § 982.54 Administrative plan.

(a) The HA 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 HA Board of Commissioners or other authorized HA officials. The administrative plan states HA policy on matters for which the HA has discretion to establish local policies.

(b) The administrative plan must be in accordance with HUD regulations and other requirements. The HA must revise the administrative plan if needed to comply with HUD requirements. The HA must give HUD a copy of the administrative plan.

(c) The HA must administer the program in accordance with the HA administrative plan.

(d) The HA administrative plan must cover HA policies on these subjects:

(1) How the HA selects applicants from the HA waiting list, including applicants with federal and other preferences, and procedures for closing and reopening the HA waiting list;

(2) Issuing or denying vouchers or certificates, including HA policy governing the voucher or certificate term and any extensions or suspension of the term. "Suspension" means stopping the clock on the term of a family's certificate or voucher after the family submits a request for lease approval. If the HA decides to allow extensions or suspensions of the certificate or voucher term, the HA administrative plan must describe how the HA determines whether to grant extensions or suspensions, and how the HA determines the length of any extension or suspension;

(3) Any special rules for use of available funds when HUD provides funding to the HA 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";

(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) A statement of the HA policy on 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) For the voucher program: the process for establishing and revising payment standards, including affordability adjustments;

(15) Special policies concerning special housing types in the program (e.g., use of shared housing); and

(16) Policies concerning payment by a family to the HA of amounts the family owes the HA.

### Subpart C—Funding and HA Application for Funding

#### § 982.101 Allocation of funding.

(a) *Allocation to HUD offices.* The Department allocates budget authority for the tenant-based programs 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 (e.g., settlement of litigation);

(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 HAs by publishing one or more notices of funding availability (NOFA) 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 HA application for funding.

(a) An HA 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 an HA 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.

(d) The application must meet requirements of:

(1) HUD's drug-free workplace regulations at 24 CFR part 24, subpart F; and

(2) HUD's anti-lobbying regulations at 24 CFR part 87.

#### § 982.103 HUD review of application.

(a) *Processing applications.* (1) HUD will provide opportunity for the chief executive officer of the unit of general local government to review and comment on an application for funding for more than 12 units. The local comment requirements are stated in 24 CFR part 791, subpart C.

(2) 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 HA capability to administer the program.

(3) HUD must consider any comments received from the unit of general local government.

(b) *Approval or disapproval of HA funding application.* (1) HUD must notify the HA of its approval or disapproval of the HA funding application.

(2) When HUD approves an application, HUD must notify the HA of the amount of approved funding.

(3) For budget authority that is distributed to HAs 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).

### Subpart D—Annual Contributions Contract and HA 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 an HA. Under the ACC, HUD agrees to make payments to the HA, over a specified term, for housing assistance payments to owners and for the HA administrative fee. The ACC specifies the maximum annual payment by HUD, and the maximum payment over the ACC term. The HA 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 HA program constitutes a separate ACC. However, commitments for all the funding increments in an HA program

are listed in one consolidated contractual document called the consolidated annual contributions contract (consolidated ACC). A single consolidated ACC covers funding for the HA certificate program and voucher program.

(b) *Budget authority and contract authority.* (1) Budget authority is the maximum amount that may be paid by HUD to an HA over the ACC term of a funding increment. Contract authority is the maximum annual payment for the funding increment. Budget authority for a funding increment is equal to contract authority times the number of years in the increment term. Before adding a funding increment to the consolidated ACC for an HA 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 initial term over which HUD will make payments for the HA program, and the contract authority and budget authority for the funding increment. For a given HA fiscal year, the amount of HUD's maximum annual payment for the HA program equals the sum of the contract authority for all of the funding increments under the consolidated ACC. However, this maximum amount does not include contract authority for an expired funding increment. If the term of a funding increment expires during the HA fiscal year, this maximum amount only includes the pro-rata portion of contract authority for the portion of the HA fiscal year prior to expiration. (Additional payments may be made from the ACC reserve account described in § 982.154.) However, the amount to be paid must be approved by HUD, and may be less than the maximum payment.

#### § 982.152 Administrative fee.

(a) *Purposes of administrative fee.* (1) HUD may approve administrative fees to the HA for any of the following purposes:

- (i) Ongoing administrative fee;
- (ii) Preliminary fee;
- (iii) Cost to help families who experience difficulty renting appropriate housing;
- (iv) Cost to coordinate supportive services for elderly and disabled families;
- (v) Cost to coordinate supportive services for families participating in the family self-sufficiency (FSS) program;
- (vi) Cost of audit by an independent public accountant; and
- (vii) Other extraordinary costs determined necessary by HUD Headquarters.

(2) For each HA fiscal year, administrative fees are specified in the HA 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.

(b) *Ongoing administrative fee.* (1) The HA 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 established by HUD.

(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 HA demonstrates that it is efficiently administering its tenant-based 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 HA-owned units.

(c) *Preliminary fee.* (1) A preliminary fee is paid by HUD for each new unit added to the HA program. The preliminary fee is a one time fee for each new unit supported by a new funding increment. HUD establishes the maximum preliminary fee.

(2) The preliminary fee is used to cover expenses that the HA documents it has incurred to help families who inquire about or apply for the program, to lease up new units, or to pay for family self-sufficiency program activities.

(d) *Reducing HA administrative fee.* HUD may reduce or offset any administrative fee to the HA, in the amount determined by HUD, if the HA fails to perform HA administrative responsibilities correctly or adequately under the program (for example, HA failure to enforce HQS requirements; or to reimburse a receiving HA promptly under portability procedures).

#### § 982.153 HA responsibilities.

(a) The HA must comply with the consolidated ACC, the application, HUD regulations and other requirements, and the HA administrative plan.

(b) In administering the program, the HA must:

- (1) Publish and disseminate information about the availability and nature of housing assistance under the program;
- (2) Explain the program to owners and families;
- (3) Seek expanded opportunities for assisted families to locate housing

outside areas of poverty or racial concentration;

(4) Encourage owners to make units available for leasing in the program, including owners of suitable units located outside areas of poverty or racial concentration;

(5) Affirmatively further fair housing goals and comply with equal opportunity requirements;

(6) Make efforts to help disabled persons find satisfactory housing;

(7) Receive applications from families, determine eligibility, maintain the waiting list, select applicants, issue a voucher or certificate to each selected family, provide housing information to families selected;

(8) Determine who can live in the assisted unit, at admission and during the family's participation in the program;

(9) Obtain and verify evidence of citizenship and eligible immigration status in accordance with 24 CFR part 812;

(10) Review the family's request for approval of the unit and lease;

(11) Inspect the unit before assisted occupancy and at least annually during the assisted tenancy;

(12) Determine the amount of the housing assistance payment for a family;

(13) Determine the maximum rent to the owner, and whether the rent is reasonable;

(14) Make timely housing assistance payments to an owner in accordance with the HAP contract;

(15) Examine family income, size and composition, at admission and during the family's participation in the program. The examination includes verification of income and other family information;

(16) Establish and adjust HA utility allowance;

(17) Administer and enforce the housing assistance payments contract with an owner, including taking appropriate action, as determined by the HA, if the owner defaults (e.g., HQS violation);

(18) Determine whether to terminate assistance to a participant family for violation of family obligations;

(19) Conduct informal reviews of certain HA decisions concerning applicants for participation in the program;

(20) Conduct informal hearings on certain HA decisions concerning participant families;

(21) Provide sound financial management of the program, including engaging an independent public accountant to conduct audits; and

(22) Administer an FSS program (if applicable).

**§ 982.154 ACC reserve account.**

(a)(1) HUD establishes an unfunded reserve account, called the ACC reserve account (formerly "project reserve"), for the HA's program. There are separate ACC reserve accounts for the HA's certificate and voucher programs. The ACC reserve account is established and maintained in the amount determined by HUD.

(2) At the end of each HA fiscal year, HUD credits the ACC reserve account from the amount by which the sum of contract authority for all funding increments under the consolidated ACC (maximum annual payment) exceeds the amount actually approved and paid for the HA fiscal year. However, the maximum annual payment does not include contract authority for an expired funding increment. If the term of a funding increment expires during the HA fiscal year, this maximum amount only includes the pro-rata portion of contract authority for the funding increment covering the portion of the HA fiscal year prior to expiration.

(b) HUD may approve additional payments for the HA program from available amounts in the ACC reserve account.

**§ 982.155 Administrative fee reserve.**

(a) The HA must maintain an administrative fee reserve (formerly "operating reserve") for the program. There are separate administrative fee reserve accounts for the HA's certificate and voucher programs. The HA must credit to the administrative fee reserve the total of:

(1) The amount by which program administrative fees paid by HUD for an HA fiscal year exceed the HA program administrative expenses for the fiscal year; plus

(2) Interest earned on the administrative fee reserve.

(b)(1) The HA must use funds in the administrative fee reserve to pay program administrative expenses in excess of administrative fees paid by HUD for an HA fiscal year. If funds in the administrative fee reserve are not needed to cover HA administrative expenses (to the end of the last expiring funding increment under the consolidated ACC), the HA 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 HA 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 HA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the HA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses.

**§ 982.156 Depository for program funds.**

(a) Unless otherwise required or permitted by HUD, all program receipts must be promptly deposited with a financial institution selected as depository by the HA in accordance with HUD requirements.

(b) The HA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.

(c) The HA must enter into an agreement with the depository in the form required by HUD.

(d)(1) If required under a written freeze notice from HUD to the depository:

(i) The depository may not permit any withdrawal by the HA of funds held under the depository agreement unless expressly authorized by written notice from HUD to the depository; and

(ii) The depository must permit withdrawals of such funds by HUD.

(2) HUD must send the HA a copy of the freeze notice from HUD to the depository.

**§ 982.157 Budget and expenditure.**

(a) *Budget submission.* Each HA fiscal year, the HA must submit its proposed budget for the program to HUD for approval at such time and in such form as required by HUD.

(b) *HA use of program receipts.* (1) HUD payments under the consolidated ACC, and any other amounts received by the HA in connection with the program, must be used in accordance with the HA HUD-approved budget. Such HUD payments and other receipts may only be used for:

(i) Housing assistance payments; and

(ii) HA administrative fees.

(2) The HA must maintain a system to ensure that the HA will be able to make housing assistance payments for all participants within the amounts contracted under the consolidated ACC.

**§ 982.158 Program accounts and records.**

(a) The HA 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.

(b) The HA 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 HA offices and facilities, and to all accounts and other records of the HA that are pertinent to administration of the program, including the right to examine or audit the records, and to make copies. The HA 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 HA must prepare a report of every unit inspection required under this rule. Each report must specify:

(1) Any defects or deficiencies in the unit that must be corrected to meet the HQS; and

(2) Other defects or deficiencies observed by the HA inspector (for use if the owner later claims that the defects or deficiencies were caused by the family).

(e) During the term of each assisted lease, and for at least three years thereafter, the HA must keep:

(1) A copy of the executed lease;

(2) The HAP contract; and

(3) The application from the family.

(f) The HA 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 inspection records (as required by § 982.401(j));

(6) Accounts and other records supporting HA budget and financial statements for the program; and

(7) Other records specified by HUD.

**§ 982.159 Audit requirements.**

(a) The HA must engage and pay an independent public accountant to conduct audits in accordance with HUD requirements.

(b) The HA 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 HA organized, or that there is no HA 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 HAs under this part with respect to the area.

**§ 982.161 Conflict of interest.**

(a) Neither the HA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs 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 HA (except a participant commissioner);

(2) Any employee of the HA, or any contractor, subcontractor or agent of the HA, 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 HA 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 HA must use program contracts and other forms required by HUD headquarters, including:

(1) The consolidated ACC between HUD and the HA;

(2) The HAP contract between the HA and the owner; and

(3) The lease language required by HUD (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 Fraud recoveries.**

Under 24 CFR part 792, the HA may retain a portion of program fraud losses that the HA recovers from a family or owner by litigation, court-order or a repayment agreement.

\* \* \* \* \*

**Subpart F—[Reserved]**

**Subpart G—Leasing a Unit**

**§ 982.301 Information when family is selected.**

(a) *HA briefing of family.* (1) When the HA selects a family to participate in a tenant-based program, the HA 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 HA jurisdiction.

(2) For a family that qualifies to lease a unit outside the HA jurisdiction under portability procedures, the briefing must include an explanation of how portability works. The HA may not discourage the family from choosing to live anywhere in the HA jurisdiction, or outside the HA jurisdiction under portability procedures.

(3) If the family is currently living in a high poverty census tract in the HA'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 HA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6.

(b) *Information packet.* When a family is selected to participate in the program, the HA must give the family a packet that includes information on the following subjects:

(1) The term of the certificate or voucher, and HA policy on any extensions or suspensions of the term. If the HA allows extensions, the packet must explain how the family can request an extension;

(2)(i) How the HA determines the housing assistance payment for a family;

(ii) For the certificate program, information on fair market rents and the HA utility allowance schedule;

(iii) For the voucher program, information on the payment standard and the HA utility allowance schedule;

(3) How the HA determines the maximum rent for an assisted unit;

(4) What the family should consider in deciding whether to lease a unit, including:

(i) The condition of a unit;

(ii) Whether the rent is reasonable;

(iii) The cost of any tenant-paid utilities and whether the unit is energy-efficient; and

(iv) The location of the unit, including proximity to public transportation,

centers of employment, schools and shopping;

(5) Where the family may lease a unit. For a family that qualifies to lease a unit outside the HA jurisdiction under portability procedures, the information packet must include an explanation of how portability works;

(6) The HUD-required "lease addendum". The lease addendum is the language that must be included in the lease;

(7) The form of request for lease approval, and an explanation of how to request HA approval to lease a unit;

(8) A statement of the HA policy on providing information about a family to prospective owners;

(9) HA subsidy standards, including when the HA will consider granting exceptions to the standards;

(10) The HUD brochure on how to select a unit;

(11) The HUD lead-based paint (LBP) brochure;

(12) Information on federal, State and local equal opportunity laws, and a copy of the housing discrimination complaint form;

(13) A list of landlords or other parties known to the HA who may be willing to lease a unit to the family, or help the family find a unit;

(14) Notice that if the family includes a disabled person, the family may request a current listing of accessible units known to the HA that may be available;

(15) Family obligations under the program;

(16) The grounds on which the HA may terminate assistance for a participant family because of family action or failure to act; and

(17) HA informal hearing procedures. This information must describe when the HA is required to give a participant family the opportunity for an informal hearing, and how to request a hearing.

**§ 982.302 Issuance of certificate or voucher; Requesting HA approval to lease a unit.**

(a) When a family is selected, the HA issues a certificate or 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 HA approval to lease the unit. The HA has the discretion to permit a family to submit more than one request at a time.

(c) The family must submit to the HA a request for lease approval and a copy of the proposed lease. Both documents must be submitted during the term of the certificate or voucher.

(d) The HA specifies the procedure for requesting approval to lease a unit. The

family must submit the request for lease approval in the form and manner required by the HA.

**§ 982.303 Term of certificate or voucher.**

(a) *Initial term.* The initial term of a certificate or voucher must be at least 60 calendar days. The initial term must be stated on the certificate or voucher.

(b) *Extensions of term.* (1) At its discretion the HA may grant a family one or more extensions of the initial term in accordance with HA policy as described in the HA administrative plan. The initial term plus any extensions may not exceed a total period of 120 calendar days from the beginning of the initial term. Any extension of the term is granted by HA notice to the family.

(2) If a member of the family is a disabled person, and the family needs an extension because of the disability, the HA must consider whether to grant a request to extend the term of the certificate or voucher (up to the maximum extension allowed under paragraph (b)(1) of this section) as a reasonable accommodation.

(c) *Suspension of term.* The HA policy may or may not provide for suspension of the initial or any extended term of the certificate or voucher. At its discretion, and in accordance with HA policy as described in the HA administrative plan, the HA may grant a family a suspension of the certificate or voucher term if the family has submitted a request for lease approval during the term of the certificate or voucher. (§ 982.4 (definition of "suspension"); § 982.54(d)(2)) The HA may grant a suspension for any part of the period after the family has submitted a request for lease approval up to the time when the HA approves or denies the request.

(d) *Progress report by family to the HA.* During the initial or any extended term of a certificate or voucher, the HA 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 HA.

**§ 982.304 Illegal discrimination: HA 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 HA must give the family information on how to fill out and file a housing discrimination complaint.

**§ 982.305 HA approval to lease a unit.**

(a) *Program requirements.* The HA may not give approval for the family to

lease a dwelling unit, or execute a HAP contract, until the HA has determined that all the following meet program requirements:

- (1) The unit is eligible;
- (2) The unit has been inspected by the HA and passes HQS;
- (3) The lease is approvable and includes the lease addendum;
- (4) The rent to owner is reasonable; and
- (5) For a unit leased under the certificate program, the total of contract rent plus any utility allowance does not exceed the FMR/exception rent limit.

(b) *Actions before lease term.* All of the following must always be completed before the beginning of the lease term:

- (1) The HA has inspected the unit, and has determined that the unit satisfies the HQS;
- (2) The landlord and the tenant have executed the lease; and
- (3) The HA has approved leasing of the unit in accordance with program requirements.

(c) *When HAP contract is executed.*

(1) The HA 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 HA 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 HA 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 HA may not pay any housing assistance payment to the owner.

(d) *Notice to family and owner.* After receiving the family's request for approval to lease a unit, the HA must promptly notify the family and owner whether the assisted tenancy is approved.

(e) *Procedure after HA approval.* If the HA has given approval for the family to lease the unit, the owner and the HA execute the HAP contract.

**§ 982.306 HA disapproval of owner.**

(a) The HA must not approve a unit if the HA has been informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

(b) When directed by HUD, the HA must not approve a unit 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 HA may deny approval to lease a unit from an owner for any of the following reasons:

(1) The owner has violated obligations under a housing assistance payments 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 drug-trafficking;

(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 renting units that fail to meet State or local housing codes; or

(6) The owner has not paid State or local real estate taxes, fines or assessments.

(d) Nothing in this rule is intended to give any owner any right to participate in the program.

(e) For purposes of this section, "owner" includes a principal or other interested party.

**§ 982.307 Owner responsibility for screening tenants.**

(a) *Owner screening.* (1) Listing a family on the HA waiting list, or selecting a family for participation in the program, is not a representation by the HA to the owner about the family's expected behavior, or the family's suitability for tenancy. At or before HA approval to lease a unit, the HA must inform the owner that the HA has not screened the family's behavior or suitability for tenancy and that such screening is the owner's own responsibility.

(2) Owners are permitted and encouraged to screen 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 others to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the life, safety or property of others; and  
(v) Compliance with other essential conditions of tenancy.

(b) *HA information about tenant.* (1) The HA must give the owner:

(i) The family's current address (as shown in the HA records); and  
(ii) The name and address (if known to the HA) of the landlord at the family's current and prior address.

(2) When a family wants to lease a dwelling unit, the HA may offer the owner other information in the HA possession, about the family, including information about the tenancy history of family members, or about drug-trafficking by family members.

(3) The HA must give the family a statement of the HA 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 HA policy must provide that the HA will give the same types of information to all families and to all owners.

#### § 982.308 Lease.

(a) *Tenant's legal capacity to enter lease.* The tenant must have legal capacity to enter into a lease under State or local law.

(b) *HA approval of lease.* The assisted lease between the tenant and owner (including any new lease or lease revision) must be approved by the HA. Before approving the lease or revision, the HA must determine that the lease meets the requirements of this section.

(c) *Required lease provisions.* (1) "Lease addendum" means the lease language required by HUD.

(2) The lease must include word-for-word all provisions of the lease addendum (e.g., by adding the lease addendum to the form of lease used by the owner for unassisted tenants). However, the HA may not require families and owners to use a model program lease.

(3) If there is any conflict between the lease addendum and any other provisions of the lease, the provisions required by HUD shall control.

(d) *Prohibited lease provisions.* The lease addendum must state that the following types of lease provisions are prohibited:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner, in a lawsuit brought in connection with the lease.

(2) *Treatment of personal property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to

the tenant, and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property left in the dwelling unit after the tenant has moved out. The owner may dispose of this personal property in accordance with State and local law.

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agent legally responsible for any action or failure to act, whether intentional or negligent.

(4) *Waiver of notice.* Agreement by the tenant that the owner may bring a lawsuit against the tenant without notice to the tenant.

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury.

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive any right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay the owner's attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. However, the tenant may be obligated to pay costs if the tenant loses.

(e) *Utilities and appliances.* The lease must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

(f) *State or local law.* The HA may review the lease to determine if the lease complies with State or local law. The HA may decline to approve the lease if the HA determines that the lease does not comply with State or local law.

#### § 982.309 Term of assisted tenancy.

(a) *Term of HAP contract.* (1) The term of the HAP contract begins on the first day of the term of the lease and ends on the last day of the term of the lease.

(2) The HAP contract terminates if the lease terminates.

(b) *Term of lease.* (1) The initial term of the lease must be for at least one year.

(2) The lease must provide for automatic renewal after the initial term

of the lease. The lease may provide either:

(i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or

(ii) For automatic indefinite extension of the lease term.

(3) The term of the lease terminates if any of the following occurs:

(i) The owner terminates the lease;

(ii) The tenant terminates the lease;

(iii) The owner and the tenant agree to terminate the lease;

(iv) The HA terminates the HAP contract; or

(v) The HA terminates assistance for the family.

(c) *Relation of lease to ACC.* The HA may approve the lease, and execute the HAP contract, even if there is less than one year remaining from the beginning of the lease term to the end of the last expiring funding increment under the consolidated ACC.

(d) *Lease termination by the family.*

(1) The family may terminate the lease at any time after the first year. The lease may not require the family to give more than 60 calendar days notice of such termination to the owner.

(2) If the family terminates the lease on notice to the owner, the family must give the HA a copy of the notice of termination at the same time. Failure to do this is a breach of family obligations under the program.

(e) *New lease or revision.* (1) Any new lease or lease revision must be approved in advance by the HA. The new lease or revision must meet the requirements of this section. The HA and owner must enter a new HAP contract for the tenancy under the new or revised lease.

(2) The owner may offer the family a new lease, for a term beginning at any time after the initial term. The owner must give the tenant written notice of the offer, with a copy to the HA, at least 60 calendar days before the proposed beginning date of the new lease term. The offer must specify a reasonable time limit for acceptance by the family.

(f) *Move from unit.* The family must notify the HA 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 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 HA: 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 HA.

(2) The HA 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 HA housing assistance payment.

(c) *Criminal activity.* Any of the following types of criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control shall be cause for termination of tenancy:

(1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;

(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; or

(3) Any drug-related criminal activity on or near the premises.

(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, desire to lease the unit at a higher rental). (For statutory 90 day notice requirement if the owner is terminating the tenancy for a business or economic reason, see § 982.455.)

(2) During the first year of the 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. The notice of grounds 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 HA a copy of any owner eviction notice to the tenant.

(3) *90 day notice: HAP contract termination.* The owner must give 90 calendar days notice of HAP contract termination (to HUD, the HA and the family) in accordance with § 982.455 in the following cases:

(i) If the owner terminates the tenancy for other good cause that is a business or economic reason; or

(ii) At "expiration" of the HAP contract. ("Expiration" for this purpose is defined at § 982.455(b)(2)(iii).)

(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.

#### § 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 HA 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 HA 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 HA terminates assistance for the family.

(d) *Family move-out.* (1) If the family moves out of the unit, the HA 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 HA administrative plan establishes the HA 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 HA may allow absence for a lesser period in accordance with HA 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 HA 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 HA to verify that the family is residing in the unit, or relating to family absence from the unit. The family must cooperate with the HA for this purpose. The family must promptly notify the HA of absence from the unit, including any information requested on the purposes of family absences.

(2) The HA 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 HA administrative plan must state the HA policies on family absence

from the dwelling unit. The HA absence policy includes:

(1) How the HA determines whether or when the family may be absent, and for how long. For example, the HA 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 HA 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.

**§ 982.314 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 HA 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).

(c) *How many moves.* (1) A participant family may move one or more times with continued assistance under the program, either inside the HA jurisdiction, or under the portability procedures. (See § 982.353)

(2) The HA may establish:

(i) Policies that prohibit any move by the family during the initial year of assisted occupancy; and

(ii) Policies that prohibit more than one move by the family during any one year period.

(3) The HA policies may apply to moves within the HA jurisdiction by a participant family, and to moves by a participant family outside the HA jurisdiction under portability procedures.

(d) *Notice that family wants to move.*

(1) If the family terminates the lease on notice to the owner, the family must give the HA a copy of the notice at the same time.

(2) If the family wants to move to a new unit, the family must notify the HA 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 HA jurisdiction, the notice to the initial HA must specify the area where the family wants to move. See portability procedures in subpart H of this part.

(e) *When HA may deny permission to move.* (1) The HA may deny permission to move if the HA does not have sufficient funding for continued assistance.

(2) At any time, the HA may deny permission to move in accordance with § 982.552 (grounds for denial or termination of assistance).

**§ 982.315 Family break-up.**

(a) The HA has discretion to determine which members of an assisted family continue to receive assistance in the program if the family breaks up. The HA administrative plan must state HA policies on how to decide who remains in the program if the family breaks up.

(b) The factors to be considered in making this decision under the HA 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 physical violence against family members by a spouse or other member of the household.

(4) Other factors specified by the HA.

(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 HA is bound by the court's determination of which family members continue to receive assistance in the program.

**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 HA 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 HA.

**§ 982.352 Eligible housing.**

(a) *Ineligible housing.* The following types of housing may not be assisted by an HA 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 dwelling unit. (However, assistance may be provided for a family residing in a cooperative. In the certificate program, assistance may be provided to the owner of a manufactured home leasing a manufactured home space. In the case of shared housing, an owner unrelated to the assisted family may reside in the unit, but assistance may not be paid on behalf of the resident owner.); and

(7) For provisions on HA disapproval of an owner, see § 982.306.

(b) *HA-owned housing.* (1) A unit that is owned by the HA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HA) may only be assisted under the tenant-based program if:

(i) The family has been informed by the HA, both orally and in writing, that the family has the right to select any

eligible dwelling unit, and an HA-owned unit is freely selected by the family, without HA pressure or steering;

(ii) The unit is not ineligible housing;

(iii) During assisted occupancy, the family does not benefit from any form of housing subsidy prohibited under paragraph (c) of this section;

(iv) The initial contract rent (for a certificate program unit) and the initial rent to owner (for a voucher program unit) has been approved by HUD before execution of the HAP contract and commencement of the assisted lease term; and

(v) Any adjustment of the contract rent (for a certificate program unit) and any changes in the rent to owner (for a voucher program unit) is approved in advance by HUD.

(2) The HA 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 Farmers Home Administration program);

(8) Any local or State rent subsidy; or

(9) 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 HA 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 HA.

(b) *Portability: Assistance outside the initial HA jurisdiction.* Except as

provided in paragraph (c) of this section, the family may receive tenant-based assistance to lease a unit outside the initial HA jurisdiction:

(1) In the same State as the initial HA;

(2) In the same metropolitan statistical area (MSA) as the initial HA, but in a different State;

(3) In an MSA that is next to the same MSA as the initial HA, but in a different State; or

(4) In the jurisdiction of an HA anywhere in the United States that is administering a tenant-based program.

(c) *Nonresident applicants.* (1) This paragraph (c) applies if neither the household head or spouse of an assisted family already had a "domicile" (legal residence) in the jurisdiction of the initial HA at the time when the family first submitted an application for participation in the program to the initial HA.

(2) During the 12 month period from the time when the family is admitted to the program, the family does not have any right to lease a unit outside the initial HA jurisdiction. During this period, the family may lease a unit located anywhere in the jurisdiction of the initial HA.

(3) If both the initial HA and a receiving HA agree, the family may lease a unit outside the HA jurisdiction under portability procedures.

(d) *Income eligibility.* (1) For admission to the certificate or voucher program, a family must be income eligible in the area where the family initially leases a unit with assistance in the certificate or voucher program.

(2) A portable family transferring between the certificate and voucher programs must be income-eligible for the new program in the area where the family leases an assisted unit. This requirement applies if the family is either:

(i) Transferring from the initial HA certificate program to the receiving HA voucher program; or

(ii) Transferring from the initial HA voucher program to the receiving HA certificate program.

(3) If a portable family was already a participant in the initial HA certificate or voucher program, income eligibility is not redetermined unless the family transfers between the programs.

(e) *Leasing in-place.* If the dwelling unit is approvable, a family may select the dwelling unit occupied by the family before selection for participation in the program.

(f) *Freedom of choice.* Except as provided in part 982 (e.g., prohibition on use of ineligible housing, housing not meeting HQS, or housing for which the contract rent (certificate program) or

rent to owner (voucher program) exceeds a reasonable rent, the HA may not directly or indirectly reduce the family's opportunity to select among available units.

**§ 982.354 Portability: Administration by initial HA outside the initial HA jurisdiction.**

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial HA jurisdiction, the initial HA must administer assistance for the family if:

(1) The unit is located within the same State as the initial HA, in the same metropolitan statistical area (MSA) as the initial HA (but in a different State), or in an MSA that is next to the same MSA as the initial HA (but in a different State); and

(2) No other HA with a tenant-based program has jurisdiction in the area where the unit is located.

(b) In these conditions, the family remains in the program of the initial HA. The initial HA has the same responsibilities for administration of assistance for the family living outside the HA jurisdiction as for other families assisted by the HA, within the HA jurisdiction. For the purpose of permitting HA administration of program assistance for the family in the area outside of the HA jurisdiction as defined by State and local law (and thereby to satisfy the family's right to portability under federal law), the federal law and this regulation preempt limits on the HA jurisdiction under State and local law.

(c) The initial HA may choose to use another HA, a private management entity or other contractor or agent to help the initial HA administer assistance outside the HA jurisdiction as defined by State and local law.

**§ 982.355 Portability: Administration by receiving HA.**

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial HA jurisdiction, another HA (the "receiving HA") must administer assistance for the family if an HA with a tenant-based program has jurisdiction in the area where the unit is located.

(b)(1) In these conditions, an HA with jurisdiction in the area where the family wants to lease a unit must issue the family a certificate or voucher. If there is more than one such HA, the initial HA may choose the receiving HA.

(2) The receiving HA has the choice of assisting the family under either the certificate program or the voucher program. If the family was receiving assistance under the initial HA

certificate program, but is ineligible for admission to the voucher program, a receiving HA that administers a certificate program must provide continued assistance under the certificate program. If the family was receiving assistance under the initial HA voucher program, but is ineligible for admission to the certificate program, a receiving HA that administers a voucher program must provide continued assistance under the voucher program.

(c) *Portability procedures.* (1) The initial HA must determine whether the family is income-eligible in the area where the family wants to lease a unit.

(2) The initial HA must advise the family how to contact and request assistance from the receiving HA. The initial HA must promptly notify the receiving HA to expect the family.

(3) The family must promptly contact the receiving HA, and comply with receiving HA procedures for incoming portable families.

(4) The initial HA must give the receiving HA the most recent HUD Form 50058 (Family Report) for the family, and related verification information. If the receiving HA opts to conduct a new reexamination, the receiving HA may not delay issuing the family a voucher or certificate or otherwise delay approval of a unit unless the recertification is necessary to determine income eligibility.

(5) When the portable family requests assistance from the receiving HA, the receiving HA must promptly inform the initial HA whether the receiving HA will bill the initial HA for assistance on behalf of the portable family, or will absorb the family into its own program.

(6) The receiving HA must issue a certificate or voucher to the family. The term of the receiving HA certificate or voucher may not expire before the expiration date of any initial HA certificate or voucher. The receiving HA must determine whether to extend the certificate or voucher term. The family must submit a request for lease approval to the receiving HA during the term of the receiving HA certificate or voucher.

(7) The receiving HA must determine the family unit size for the portable family. The family unit size is determined in accordance with the subsidy standards of the receiving HA.

(8) The receiving HA must promptly notify the initial HA if the family has leased an eligible unit under the program, or if the family fails to submit a request for lease approval for an eligible unit within the term of the certificate or voucher.

(9) To provide tenant-based assistance for portable families, the receiving HA

must perform all HA program functions, such as reexaminations of family income and composition. At any time, either the initial HA or the receiving HA may make a determination to deny or terminate assistance to the family in accordance with § 982.552.

(d) *Absorption by the receiving HA.* (1) If funding is available under the consolidated ACC for the receiving HA certificate or voucher program when the portable family is received, the receiving HA may absorb the family into the receiving HA certificate or voucher program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving HA tenant-based program.

(2) HUD may require that the receiving HA absorb all or a portion of the portable families.

(e) *Portability Billing.* (1) To cover assistance for a portable family, the receiving HA may bill the initial HA for housing assistance payments and administrative fees. This paragraph (e) describes the billing procedure.

(2) The initial HA must promptly reimburse the receiving HA for the full amount of the housing assistance payments made by the receiving HA for the portable family. The amount of the housing assistance payment for a portable family in the receiving HA program is determined in the same manner as for other families in the receiving HA program.

(3) The initial HA must promptly reimburse the receiving HA for 80 percent of the initial HA on-going administrative fee for each unit month that the family receives assistance under the tenant-based programs from the receiving HA.

(4) HUD may reduce the administrative fee to an initial HA, if the HA does not promptly reimburse the receiving HA for housing assistance payments or fees on behalf of portable families.

(5) In administration of portability, the initial HA and the receiving HA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial and receiving HA must comply with billing and payment deadlines under the financial procedures. HUD may assess penalties against an initial or receiving HA for violation, as determined by HUD, of HUD portability requirements.

(6) An HA must manage the HA tenant-based programs in a manner that ensures that the HA has the financial ability to provide assistance for families that move out of the HA program under the portability procedures that have not been absorbed by the receiving HA, as

well as for families that remain in the HA program.

(7) When a portable family moves out of the tenant-based program of a receiving HA that has not absorbed the family, the HA in the new jurisdiction to which the family moves becomes the receiving HA, and the first receiving HA is no longer required to provide assistance for the family.

(f) *Portability funding.* (1) HUD may transfer funds for assistance to portable families to the receiving HA from funds available under the initial HA ACC.

(2) HUD may provide additional funding (e.g., funds for incremental units) to the initial HA for funds transferred to a receiving HA for portability purposes.

(3) HUD may provide additional funding (e.g., funds for incremental units) to the receiving HA for absorption of portable families.

(4) HUD may require the receiving HA to absorb portable families.

#### **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 in the programs. Program housing must comply with the HQS, both at initial occupancy of the dwelling unit, and during the term of the assisted lease.

(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 grant approval for the HA to use acceptability criteria variations that are based on local codes or national standards that satisfy the purposes of the HQS.

(iii) HUD may approve acceptability criteria variations because of local climatic or geographic conditions.

(iv) HUD will not approve acceptability criteria variations that will unduly limit the amount and types of available rental housing stock.

(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.*—(1) *Purpose and applicability.* (i) The purpose of paragraph (j) of this section is to implement section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning for units assisted under this part. Paragraph (j) of this section is issued under 24 CFR 35.24 (b)(4) and supersedes, for all housing to which it applies, the requirements of subpart C of 24 CFR part 35.

(ii) The requirements of paragraph (j) of this section do not apply to 0-bedroom units, units that are certified by a qualified inspector to be free of lead-based paint, or units designated exclusively for elderly. The requirements of subpart A of 24 CFR part 35 apply to all units constructed prior to 1978 covered by a HAP contract under part 982.

(2) *Definitions.*

*Chewable surface.* Protruding painted surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age; for example, protruding corners, window sills and frames, doors and frames, and other protruding woodwork.

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

*Defective paint surface.* A surface on which the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level (EBL).*

Excessive absorption of lead. Excessive absorption is a confirmed concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter) for a single test or of 15–19 ug/dl in two consecutive tests 3–4 months apart.

*HEPA* means a high efficiency particle accumulator as used in lead abatement vacuum cleaners.

*Lead-based paint.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 milligram per centimeter squared (mg/cm<sup>2</sup>), or 0.5 percent by weight or 5000 parts per million (PPM).

(3) *Requirements for pre-1978 units with children under 6.* (i) If a dwelling unit constructed before 1978 is occupied by a family that includes a child under the age of six years, the initial and each periodic inspection (as

required under this part), must include a visual inspection for defective paint surfaces. If defective paint surfaces are found, such surfaces must be treated in accordance with paragraph (j)(6) of this section.

(ii) The HA may exempt from such treatment defective paint surfaces that are found in a report by a qualified lead-based paint inspector not to be lead-based paint, as defined in paragraph (j)(2) of this section. For purposes of this section, a qualified lead-based paint inspector is a State or local health or housing agency, a lead-based paint inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD.

(iii) Treatment of defective paint surfaces required under this section must be completed within 30 calendar days of HA notification to the owner. When weather conditions prevent treatment of the defective paint conditions on exterior surfaces within the 30 day period, treatment as required by paragraph (j)(6) of this section may be delayed for a reasonable time.

(iv) The requirements in this paragraph (j)(3) apply to:

(A) All painted interior surfaces within the unit (including ceilings but excluding furniture);

(B) The entrance and hallway providing ingress or egress to a unit in a multi-unit building; and

(C) Exterior surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age (including walls, stairs, decks, porches, railings, windows and doors, but excluding outbuildings such as garages and sheds).

(4) *Additional requirements for pre-1978 units with children under 6 with an EBL.* (i) In addition to the requirements of paragraph (j)(3) of this section, for a dwelling unit constructed before 1978 that is occupied by a family with a child under the age of six years with an identified EBL condition, the initial and each periodic inspection (as required under this part) must include a test for lead-based paint on chewable surfaces. Testing is not required if previous testing of chewable surfaces is negative for lead-based paint or if the chewable surfaces have already been treated.

(ii) Testing must be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Where lead-based paint on chewable surfaces is identified, treatment of the

paint surface in accordance with paragraph (j)(6) of this section is required, and treatment shall be completed within the time limits in paragraph (j)(3) of this section.

(iii) The requirements in paragraph (j)(4) of this section apply to all protruding painted surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age:

(A) Within the unit;

(B) The entrance and hallway providing access to a unit in a multi-unit building; and

(C) Exterior surfaces (including walls, stairs, decks, porches, railings, windows and doors, but excluding outbuildings such as garages and sheds).

(5) *Treatment of chewable surfaces without testing.* In lieu of the procedures set forth in paragraph (j)(4) of this section, the HA may, at its discretion, waive the testing requirement and require the owner to treat all interior and exterior chewable surfaces in accordance with the methods set out in paragraph (j)(6) of this section.

(6) *Treatment methods and requirements.* Treatment of defective paint surfaces and chewable surfaces must consist of covering or removal of the paint in accordance with the following requirements:

(i) A defective paint surface shall be treated if the total area of defective paint on a component is:

(A) More than 10 square feet on an exterior wall;

(B) More than 2 square feet on an interior or exterior component with a large surface area, excluding exterior walls and including, but not limited to, ceilings, floors, doors, and interior walls; or

(C) More than 10 percent of the total surface area on an interior or exterior component with a small surface area, including, but not limited to, window sills, baseboards and trim.

(ii) Acceptable methods of treatment are: removal by wet scraping, wet sanding, chemical stripping on or off site, replacing painted components, scraping with infra-red or coil type heat gun with temperatures below 1100 degrees, HEPA vacuum sanding, HEPA vacuum needle gun, contained hydroblasting or high pressure wash with HEPA vacuum, and abrasive sandblasting with HEPA vacuum. Surfaces must be covered with durable materials with joints and edges sealed and caulked as needed to prevent the escape of lead contaminated dust.

(iii) Prohibited methods of removal are: open flame burning or torching; machine sanding or grinding without a HEPA exhaust; uncontained

hydroblasting or high pressure wash; and dry scraping except around electrical outlets or except when treating defective paint spots no more than two square feet in any one interior room or space (hallway, pantry, etc.) or totalling no more than twenty square feet on exterior surfaces.

(iv) During exterior treatment soil and playground equipment must be protected from contamination.

(v) All treatment procedures must be concluded with a thorough cleaning of all surfaces in the room or area of treatment to remove fine dust particles. Cleanup must be accomplished by wet washing surfaces with a lead solubilizing detergent such as trisodium phosphate or an equivalent solution.

(vi) Waste and debris must be disposed of in accordance with all applicable Federal, state and local laws.

(7) *Tenant protection.* The owner must take appropriate action to protect residents and their belongings from hazards associated with treatment procedures. Residents must not enter spaces undergoing treatment until cleanup is completed. Personal belongings that are in work areas must be relocated or otherwise protected from contamination.

(8) *Owner information responsibilities.* Prior to execution of the HAP contract, the owner must inform the HA and the family of any knowledge of the presence of lead-based paint on the surfaces of the residential unit.

(9) *HA data collection and recordkeeping responsibilities.* (i) The HA must attempt to obtain annually from local health agencies the names and addresses of children with identified EBLs and must annually match this information with the names and addresses of participants under this part. If a match occurs, the HA must determine whether local health officials have tested the unit for lead-based paint. If the unit has lead-based paint the HA must require the owner to treat the lead-based paint. If the owner does not complete the corrective actions required by this section, the family must be issued a certificate or voucher to move.

(ii) The HA must keep a copy of each inspection report for at least three years. If a dwelling unit requires testing, or if the dwelling unit requires treatment of chewable surfaces based on the testing, the HA must keep the test results indefinitely and, if applicable, the owner certification of treatment. The records must indicate which chewable surfaces in the dwelling units have been tested and which chewable surfaces in the units have been treated. If records establish that certain chewable surfaces

were tested or tested and treated in accordance with the standards prescribed in this section, such chewable surfaces do not have to be tested or treated at any subsequent time.

(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 HA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions.

(2) For each family, the HA determines the appropriate number of bedrooms under the HA subsidy standards (family unit size).

(3) The family unit size number is entered on the certificate or voucher issued to the family. The HA issues the family a voucher or certificate 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 HA determines family unit size under the HA 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 HA 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 HA subsidy standards.

(8) In determining family unit size for a particular family, the HA may grant an exception to its established subsidy standards if the HA 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 HA exception may not override the limitation in paragraph (b)(7) of this section.)

(c) *Effect of family unit size—maximum subsidy.* The family unit size, as determined for a family under the HA subsidy standards, is used to determine the maximum rent subsidy for the family:

(1) *Certificate program.* HUD establishes fair market rents by number of bedrooms. The sum of the initial contract rent plus any utility allowance may not exceed either:

(i) The FMR/exception rent limit for the family unit size; or  
(ii) The FMR/exception rent limit for the unit rented by the family.

(2) *Voucher program.* The HA establishes payment standards by number of bedrooms. The payment standard for the family must be the lower of:

(i) The payment standard for the family unit size; or  
(ii) The payment standard for 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 big or too small.**

(a) *Violation of HQS space standards.*

(1) Paragraph (a) of this section applies to the tenant-based certificate program and voucher program.

(2) If the HA 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 HA must issue the family a new certificate or voucher, and the family and HA must try to find an acceptable unit as soon as possible.

(3) If an acceptable unit is available for rental by the family, the HA must terminate the HAP contract in accordance with its terms.

(b) *Certificate program only—Subsidy too big for family size.*

(1) Paragraph (b) of this section applies to the tenant-based certificate program.

(2) The HA must issue the family a new certificate, and the family and HA must try to find an acceptable unit as soon as possible if:

(i) The family is residing in a dwelling unit with a larger number of bedrooms than appropriate for the family unit size under the HA subsidy standards; and

(ii) The gross rent for the unit (sum of the contract rent plus any utility allowance for the unit size leased) exceeds the FMR/exception rent limit for the family unit size under the HA subsidy standards.

(3) The HA must notify the family that exceptions to the subsidy standards may be granted, and the circumstances in which the grant of an exception will be considered by the HA.

(4) If an acceptable unit is available for rental by the family within the FMR/exception rent limit, the HA must terminate the HAP contract in accordance with its terms.

(c) *Termination.* When the HA terminates the HAP contract (under paragraphs (a) or (b) of this section):

(1) The HA 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 HA gives such notice to the owner.

(3) The family may move to a new unit in accordance with § 982.314.

**§ 982.404 Maintenance: Owner and family responsibility; HA 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 HA must take prompt and vigorous action to enforce the owner obligations. HA remedies for such breach of the HQS include termination, suspension or reduction of housing assistance payments and termination of the HAP contract.

(3) The HA 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 HA and the HA 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 HA-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 HA 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 HA-approved extension).

(3) If the family has caused a breach of the HQS, the HA must take prompt and vigorous action to enforce the family obligations. The HA may terminate assistance for the family in accordance with § 982.552.

**§ 982.405 HA periodic unit inspection.**

(a) The HA must inspect the unit leased to a family at least annually, and at other times as needed, to determine if the unit meets HQS.

(b) The HA must conduct supervisory quality control HQS inspections.

(c) In scheduling inspections, the HA must consider complaints and any other information brought to the attention of the HA.

(d) The HA must notify the owner of defects shown by the inspection.

(e) The HA may not charge the family or owner for initial inspection or reinspection of the unit.

**§ 982.406 Enforcement of HQS.**

Part 982 does not create any right of the family, or any party other than HUD or the HA, to require enforcement of the HQS requirements by HUD or the HA, or to assert any claim against HUD or the HA, 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) The housing assistance payments contract (HAP contract) is a contract between the HA and an owner. In the HAP contract for tenant-based assistance, the owner agrees to lease a specified dwelling unit to a specified eligible family, and the HA agrees to make monthly housing assistance payments to the owner for the family.

(b)(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.

(c)(1) The amount of the monthly housing assistance payment by the HA

to the owner is determined by the HA 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 HA is credited toward the monthly rent to owner under the family's lease.

(3) The total of rent paid by the tenant plus the HA 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 HA.

(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 HA 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 HA. See § 982.310(b).

(5) The HA must pay the housing assistance payment promptly when due to the owner in accordance with the HAP contract. If the HA fails to make timely payment, the HA may be obligated to pay a late payment fee in accordance with State or local law. However, unless authorized by HUD the HA may only use the following sources for payment of any such late payment fee:

- (i) Administrative fee income; or
- (ii) The administrative fee reserve.

#### § 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 certificate-holder or voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit.

(2) Maintaining the unit in accordance with HQS, including performance of ordinary and extraordinary maintenance.

(3) Complying with equal opportunity requirements.

(4) Preparing and furnishing to the HA 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 housing assistance payments 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-trafficking.

(b) The HA 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 HAP contract: Insufficient funding.

The HA may terminate the HAP contract if the HA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program. See § 982.455 concerning owner notice of termination.

#### § 982.455 Termination of HAP contract: Expiration and opt-out.

(a) *Automatic.* The HAP contract terminates automatically 180 calendar

days after the last housing assistance payment to the owner.

(b) *Owner termination notice.* (1) *Law.* Paragraph (b) of this section implements Section 8(c) (9) and (10) of the 1937 Act (42 U.S.C. 1437f(c) (9) and (10)) for the tenant-based Section 8 programs.

(2) *Definitions.* The following terms are defined for purposes of this section:

(i) *Termination.* Termination of the HAP contract because of:

- (A) Owner opt-out; or
- (B) Expiration of the HAP contract.

(ii) *Opt-out.* Owner's decision to terminate tenancy of an assisted family for "other good cause" that is a business or economic reason for termination of tenancy. See § 982.310 (a)(3) and (d).

(iii) *Expiration.* "Expiration" means the occurrence of either of the following events:

(A) Automatic termination of the HAP contract when 180 calendar days have passed since the last housing assistance payment.

(B) An HA determination, in accordance with HUD requirements, that the HAP contract must be terminated because there is insufficient funding under the consolidated ACC to support continued assistance for families in the program.

(3) *Owner termination notice.* Not less than 90 calendar days before a termination of a tenant-based HAP contract because of an opt-out or expiration, the owner must provide written notice of the termination to the HUD field office, the HA and the family. The owner's notice must specify the reasons for the termination. The notice must contain sufficient detail to enable the HUD field office to evaluate whether the termination is lawful and whether there are additional actions that can be taken by HUD to avoid the termination. The owner's notice must state that the owner and the HA may agree to a renewal of the HAP contract, thus avoiding the termination.

(4) *HUD review of owner termination notice.* (i) The HUD field office must review the owner's notice, and consider whether there are additional actions which should be taken to avoid the termination.

(ii) For a unit assisted under the certificate program:

(A) The HUD field office will determine whether the HA has properly adjusted the contract rent in accordance with the HAP contract and HUD regulations. If not the HUD field office will require the HA to make a proper adjustment of the contract rent in accordance with the HAP contract and the regulation.

(B) In case of termination because of an opt-out, the owner must be offered

the opportunity to enter into a new HAP contract (and assisted lease) at the maximum initial contract rent allowed (within the FMR/exception rent limit). However, the rent to owner may not exceed the reasonable rent for a comparable unassisted unit.

(iii) The HUD field office will issue a written finding of the legality of the HAP contract termination and the reasons for the termination as stated in the owner's notice, including any actions taken to avoid the termination. Within 30 calendar days of HUD's finding, the owner must provide written notice of HUD's decision to the tenant.

(iv) The owner may proceed with eviction whether the HUD field office approves or disapproves, or fails to complete the required review of the owner notice, before expiration of the 90 calendar day review period.

#### § 982.456 Third parties.

(a) Even if the family continues to occupy the unit, the HA may exercise any rights and remedies against the owner under the HAP contract.

(b) The family is not a party to or third party beneficiary of the HAP contract. The family may not exercise any right or remedy against the owner under the HAP contract. (However, the tenant may exercise any right or remedies against the owner under 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 HA or the owner under the HAP contract.

#### § 982.457 Owner refusal to lease.

(a) Section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)) provides that an owner who has entered into a HAP contract under Section 8 of the 1937 Act on behalf of any tenant in a multifamily housing project shall not refuse:

(1) To lease any available dwelling unit in any multifamily housing project of the owner that rents for an amount not greater than the fair market rent for a comparable unit to a holder of a rental certificate under Section 8 and to enter into a HAP contract respecting the unit, if a proximate cause of the refusal is the status of the prospective tenant as a holder of a certificate; or

(2) To lease any available dwelling unit in any multifamily housing project of the owner to a voucher holder and to enter into a HAP contract respecting the unit, a proximate cause of which is the status of such prospective tenant as a holder of such voucher.

(b) For the purposes of Section 8(t), the term *multifamily housing project* means a residential building containing more than four dwelling units.

#### Subpart K—Rent and Housing Assistance Payment—[Reserved]

#### 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 HA 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 812). "Information" includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the HA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. For provisions on reexamination and computation of family income, see 24 CFR part 813.

(3) The family must disclose and verify social security numbers (as provided by 24 CFR part 750) and must sign and submit consent forms for obtaining information in accordance with 24 CFR part 760 and 24 CFR part 813.

(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 HA inspection.* The family must allow the HA 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.

(f) *Family notice of move or lease termination.* The family must notify the HA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See § 982.314(d).

(g) *Owner eviction notice.* The family must promptly give the HA 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 HA. The family must promptly inform the HA of the birth, adoption or court-awarded custody of a child. The family must request HA approval to add any other family member as an occupant of the unit.

(3) The family must promptly notify the HA if any family member no longer resides in the unit.

(4) If the HA has given approval, a foster child or a live-in-aide may reside in the unit. The HA has the discretion to adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining when HA 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 HA to verify that the family is living in the unit, or relating to family absence from the unit, including any HA-requested information or certification on the purposes of family absences. The family must cooperate with the HA for this purpose. The family must promptly notify the HA 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 family members.* The members of the family may not engage in drug-related criminal activity, or violent criminal activity (see § 982.553).

(m) *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 HA denial or termination of assistance for family.

(a) *Action or inaction by family.*—(1) This section states the grounds on which an HA 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. 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 HA waiting list, denying or withdrawing a certificate or 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 HA 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) *Grounds for denial or termination of assistance.* The HA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(1) If the family violates any family obligations under the program (see § 982.551).

(2) If any member of the family has ever been evicted from public housing.

(3) If an HA has ever terminated assistance under the certificate or voucher program for any member of the family.

(4) If any member of the family commits drug-related criminal activity, or violent criminal activity (see § 982.553).

(5) If any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

(6) If the family currently owes rent or other amounts to the HA or to another HA in connection with Section 8 or public housing assistance under the 1937 Act.

(7) If the family has not reimbursed any HA 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.

(8) If the family breaches an agreement with the HA to pay amounts owed to an HA, or amounts paid to an owner by an HA. (The HA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to an HA or amounts paid to an owner by an HA. The HA may prescribe the terms of the agreement.)

(9) If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation.

(10) If the family has engaged in or threatened abusive or violent behavior toward HA personnel.

(c) *HA discretion to consider circumstances.*—(1) In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, the HA has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(2) The HA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The HA may permit the other members of a participant family to continue receiving assistance.

(d) *Requirement to sign consent forms.* The HA must deny or terminate assistance if any member of the family fails to sign and submit consent forms for obtaining information in accordance with 24 CFR part 760 and 24 CFR part 813.

(e) *Restriction on assistance to noncitizens.* The family must submit required evidence of citizenship or eligible immigration status. See 24 CFR 812.9 for a statement of circumstances in which the HA must deny or terminate assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures. See 24 CFR 812.10 for provisions on assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) instead of denial or termination of assistance, and for provisions on deferral of termination of assistance.

(f) *Information for family.* The HA must give the family a written description of:

(1) Family obligations under the program.

(2) The grounds on which the HA may deny or terminate assistance because of family action or failure to act.

(3) The HA informal hearing procedures.

**§ 982.553 Crime by family members.**

(a) At any time, the HA may deny assistance to an applicant, or terminate

assistance to a participant family if any member of the family commits:

(1) Drug-related criminal activity; or

(2) Violent criminal activity.

(b) If the HA seeks to deny or terminate assistance because of illegal use, or possession for personal use, of a controlled substance, such use or possession must have occurred within one year before the date that the HA provides notice to the family of the HA determination to deny or terminate assistance. The HA may not deny or terminate assistance for such use or possession by a family member, if the family member can demonstrate that he or she:

(1) Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and

(2) Is recovering, or has recovered from, such addiction and does not currently use or possess controlled substances. The HA may require a family member who has engaged in the illegal use of drugs to submit evidence of participation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.

(c) *Evidence of criminal activity.* In determining whether to deny or terminate assistance based on drug-related criminal activity or violent criminal activity, the HA may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

**§ 982.554 Informal review for applicant.**

(a) *Notice to applicant.* The HA 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 HA 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 HA must give an applicant an opportunity for an informal review of the HA decision denying assistance to the applicant. The administrative plan must state the HA procedures for conducting an informal review. The HA review procedures must comply with the following:

(1) The review may be conducted by any person or persons designated by the HA, 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 HA decision.

(3) The HA must notify the applicant of the HA 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 HA is not required to provide the applicant an opportunity for an informal review for any of the following:

(1) Discretionary administrative determinations by the HA.

(2) General policy issues or class grievances.

(3) A determination of the family unit size under the HA subsidy standards.

(4) An HA determination not to approve an extension or suspension of a certificate or voucher term.

(5) An HA determination not to grant approval to lease a unit under the program or to approve a proposed lease.

(6) An HA determination that a unit selected by the applicant is not in compliance with HQS.

(7) An HA 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 812.9.

#### **§ 982.555 Informal hearing for participant.**

(a) *When hearing is required.*—(1) An HA must give a participant family an opportunity for an informal hearing to consider whether the following HA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and HA 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 HA utility allowance schedule.

(iii) A determination of the family unit size under the HA subsidy standards.

(iv) A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the HA subsidy standards, or the HA determination to deny the family's request for an exception from the standards.

(v) A determination to terminate assistance for a participant family because of the family's action or failure to act (see § 982.552).

(vi) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under HA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the HA must give the opportunity for an informal hearing before the HA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The HA 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 HA.

(2) General policy issues or class grievances.

(3) Establishment of the HA schedule of utility allowances for families in the program.

(4) An HA determination not to approve an extension or suspension of a certificate or voucher term.

(5) An HA determination not to approve a unit or lease.

(6) An HA determination that an assisted unit is not in compliance with HQS. (However, the HA 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) An HA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the HA 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 HA must notify the family that the family may ask for an explanation of the basis of the HA 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 HA 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 HA

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 HA procedures for conducting informal hearings for participants.

(2) *Discover*—(i) *By family.* The family must be given the opportunity to examine before the HA hearing any HA 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 HA does not make the document available for examination on request of the family, the HA may not rely on the document at the hearing.

(ii) *By HA.* The HA hearing procedures may provide that the HA must be given the opportunity to examine at HA offices before the HA hearing any family documents that are directly relevant to the hearing. The HA must be allowed to copy any such document at the HA's expense. If the family does not make the document available for examination on request of the HA, 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 HA, 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 HA hearing procedures.

(5) *Evidence.* The HA 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 HA is not bound by a hearing decision:

(1) Concerning a matter for which the HA 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 HA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the HA determines that it is not bound by a hearing decision, the HA must promptly notify the family of the determination, and of the reasons for the determination.

(g) *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 812.9.

#### Subpart M—Special Housing Types— [Reserved]

16. Subpart E of part 982, is amended as follows:

16a. In § 982.3, the definition for “*EO plan*” is removed.

17. Paragraph (f)(2) of § 982.201 is revised to read as follows:

##### § 982.201 Eligibility.

\* \* \* \* \*

(f) \* \* \*

(2) *Grounds for decision.* For a discussion of the grounds for denying assistance because of action or inaction by the applicant, see § 982.552.

18–19. In § 982.202, paragraph (b)(1) is amended by revising the last sentence, and paragraph (d) is amended by removing the words “and EO plan” from the end of the first sentence, to read as follows:

##### § 982.202 How applicants are selected: General requirements.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* (See § 982.553.)

\* \* \* \* \*

20. In § 982.204, paragraph (a) is amended by removing the words “and EO plan” from the end of the second sentence.

21. In § 982.206, paragraphs (a)(2) and (b)(2) are revised to read as follows:

##### § 982.206 Waiting list: Opening and closing; public notice.

(a) \* \* \*

(2) The HA must give the public notice by publication in a local newspaper of general circulation, and also by minority media.

\* \* \* \* \*

(b) \* \* \*

(2) If the waiting list is open, the HA must accept applications from families for whom the list is open unless there

is good cause for not accepting the applications (such as a denial of assistance because of action or inaction by members of the family) for the grounds stated in § 982.552.

\* \* \* \* \*

22. Part 983 is added to read as follows:

#### PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

##### Subpart A—General Information

Sec.

983.1 Purpose and applicability.

983.2 Additional definitions.

983.3 Information to be submitted to HUD by the HA concerning its plan to attach assistance to units.

983.4 HUD review of HA plans to attach assistance to units.

983.5 Housing quality standards and construction standards.

983.6 Site and neighborhood standards.

983.7 Eligible and ineligible properties and HA-owned units.

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983.208 Informal review.

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

#### Subpart A—General Information

##### § 983.1 Purpose and applicability.

(a) This part 983 establishes the procedures under which a Housing Agency (HA) may, at its sole option, choose to provide Section 8 project-based assistance using funds provided to the HA for its Section 8 rental certificate program. This part 983 implements section 8(d)(2) of the 1937 Act (42 U.S.C. 1437f(d)(2)), which directs the Department to permit an HA to “attach to structures” up to 15 percent of the Section 8 assistance provided by the HA under the certificate program. (A 30 percent limit is applicable for certain State-assisted units).

(b) Within this 15 percent limit, the HA may attach a Section 8 housing assistance payments (HAP) contract to a structure if the owner agrees to construct or rehabilitate the structure *other than* with assistance provided under the United States Housing Act of 1937. The purpose of the Project-Based Certificate (PBC) Program is to induce property owners to construct standard, or upgrade substandard, rental housing stock, and make it available to low-income families at rents within the Section 8 existing housing fair market rents.

(c) This part 983 refers to assistance that is attached to units as “project-based” assistance to distinguish this assistance from the “tenant-based” assistance provided by the certificate and the voucher programs under part 982 of this chapter. With tenant-based assistance, the assisted unit is selected by the family. The HA then enters into a HAP contract, which only covers a single unit and the specific assisted family. If the family moves out of a unit, the HAP contract terminates. The family

may move with continued tenant-based assistance to a new unit. With project-based assistance, the HA enters into a HAP contract to make housing assistance payments during the contract term for a specific unit. The subsidy is paid when the owner leases the unit to an eligible family. (The unit may be vacant for a limited time.) To fill vacant project-based units, the HA refers families from its waiting list to the project owner. Because the assistance is tied to the unit, a family that moves from the unit does not have any right to continued assistance. The unit is rented to another eligible family.

(d) Except as otherwise expressly modified or excluded by this part 983, all provisions of part 982 of this chapter apply to project-based assistance under this part 983.

(e) The following sections in part 982 of this chapter, which implement the tenant-based aspect of the certificate program, do not apply to project-based assistance under this part 983: 24 CFR part 982, subpart H (Where family can live and move); § 982.314 of this chapter (Move with continued tenant-based assistance); and § 982.303 of this chapter (Term of a certificate or voucher). Other sections in this part 983 identify other tenant-based provisions of part 982 of this chapter that do not apply to project-based assistance under this part 983.

(f) Subparts C and F of this part, which implement shared housing and assistance for owners of manufactured housing for the tenant-based aspect of the certificate program, do not apply to project-based assistance under this part 983.

(g) HUD does not provide any separate funding for project-based assistance. Funding for project-based assistance is part of the ACC funding authority for the HA's entire Section 8 certificate program.

#### § 983.2 Additional definitions.

The following definitions apply to assistance subject to this part 983, in addition to the definitions in § 982.3 of this chapter:

*Agreement to enter into housing assistance payments contract* ("Agreement"). A written agreement between the owner and the HA that, upon satisfactory completion of the new construction or the rehabilitation in accordance with requirements specified in the Agreement, the HA will enter into a HAP contract with the owner.

*15-percent limit.* Fifteen percent of the total number of budgeted units for an HA's Section 8 certificate program.

*Funding source.* The ACC funding authority from which the HAP contract

is to be funded. Each funding increment identified in the ACC is a separate, potential funding source.

*Percent limit.* The applicable maximum number of budgeted units for an HA's certificate program that may be project-based. (The applicable percent limit is either the 15-percent limit or the 30-percent limit.)

*Project-based Certificate (PBC) program.* A Section 8 program administered by an HA pursuant to 24 CFR part 983.

*Repair or replacement of a major building system or component.* The complete electrical rewiring of a unit; the installation of new plumbing supply or waste pipes in a unit; the installation of a new heating distribution system, including piping and ductwork, or the installation of a new boiler or furnace; the installation of a new roof; or the replacement or major repair of exterior structural elements which are essential to achieve a stable general condition with no threat of further deterioration.

*State certified appraiser.* Any individual who satisfies the requirements for certification as a certified general appraiser in a State that has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The State criteria must include a requirement that the individual have achieved a satisfactory grade upon a State-administered examination consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, an individual must comply with any additional standards for state certified appraisers imposed by HUD under 24 CFR 267.11(c)(1).

*30-Percent limit.* Thirty percent of the total number of budgeted units for a HA's Section 8 certificate program.

#### § 983.3 Information to be submitted to HUD by the HA concerning its plan to attach assistance to units.

(a) *Requirements.* An HA may attach certificate assistance to units in accordance with this part 983 if:

(1) The number of units to be project-based does not exceed the applicable percent limit.

(2) The number of units to be project-based are not under a tenant-based or project-based HAP contract or otherwise

committed (e.g., certificates issued to families searching for housing or units under an Agreement).

(b) *Percent limit.* The applicable percent limit is either the 15-percent limit or the 30-percent limit. The 30-percent limit is only applicable if:

(1) There are no project-based new construction units in the HA's certificate program;

(2) The additional 15 percent of project-based units (in excess of the 15-percent limit) is for the rehabilitation of units in projects assisted under a State program that permits owners to prepay State-assisted or subsidized mortgages; and

(3) The additional 15 percent of project-based units is necessary to provide incentives for project owners to preserve the projects for occupancy by low and moderate income families for the term of the HAP contract, and assist low-income tenants to afford any rent increases.

(c) *HA notification to HUD of intent to attach assistance to units.* Before implementing a PBC program, the HA must submit the following information to the HUD field office for review:

(1) The total number of units for which the HA is requesting approval to attach assistance;

(2) The number of budgeted certificate units;

(3) The number of certificate units available to be project-based; i.e., the number of budgeted certificate units that are not under a tenant-based or project-based HAP contract or otherwise committed (e.g., certificates issued to families searching for housing or units under an Agreement).

#### § 983.4 HUD review of HA plans to attach assistance to units.

(a) *Notice to HA.* (1) If the requirements of § 983.3 are satisfied, the field office must authorize the HA to proceed in accordance with this part 983.

(2) If the submission is approved, the field office must notify the HA that the HA may implement a PBC program subject to the requirements of this part 983, including the requirements for approval by the HUD field office of the HA unit selection policy and advertisement, and competitive selection of eligible units. The approval letter must specify the maximum number of units for which the HA may execute Agreements.

(3) If any of the requirements of § 983.3 are not satisfied, the field office must not approve the HA submission. The field office must notify the HA of the reasons for disapproval.

(b) [Reserved]

**§ 983.5 Housing quality standards and construction standards.**

Section 982.401, *Housing quality standards*, applies to assistance under this part. In addition, § 882.109 (m), (n), and (p) of this title apply.

**§ 983.6 Site and neighborhood standards.**

(a) *Rehabilitation site and neighborhood standards.* In addition to meeting the standards required in § 982.401(l) of this chapter, the proposed sites for rehabilitation units must meet the following site and neighborhood standards:

(1) Be adequate in size, exposure and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)

(2) Be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, E.O. 11063, and HUD regulations issued pursuant thereto.

(3) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(4) Be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(5) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. (While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(b) *New construction site and neighborhood standards.* The proposed sites for new construction units must be approved by the HUD field office as meeting the following site and neighborhood standards:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(2) The site and neighborhood must be suitable from the standpoint of

facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.

(3)(i) The site must not be located in an area of minority concentration, except as permitted under paragraph (b)(3)(ii) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(ii) A project may be located in an area of minority concentration only if:

(A) Sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (b)(3)(iii) of this section for further guidance on this criterion); or

(B) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (b)(3)(iv) of this section for further guidance on this criterion).

(iii)(A) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

(B) Units may be considered "comparable opportunities" if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(C) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(1) A significant number of assisted housing units are available outside areas of minority concentration.

(2) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(3) There are racially integrated neighborhoods in the locality.

(4) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(5) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(6) A significant proportion of minority households has been successful in finding units in non-minority areas under the Section 8 certificate and voucher programs.

(7) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(iv) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An "overriding housing need," however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(5) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and

services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(7) Except for new construction housing designed for elderly persons, travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

**§ 983.7 Eligible and ineligible properties and HA-owned units.**

(a) Section 982.352 of this chapter, *Eligible Housing*, does not apply. Newly constructed and existing structures of various types may be appropriate for attaching assistance to the units under this part 983, including single-family housing and multifamily structures.

(b) An HA may not attach assistance under this part 983 to units in the following types of housing:

(1) Housing for which the construction is started before Agreement execution;

(2) Housing for which the rehabilitation is started before Agreement execution;

(3) Shared housing; nursing homes; and facilities providing continual psychiatric, medical, nursing services, board and care or intermediate care;

(4) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(5) Housing located in the Coastal Barrier Resources System designated under the Coastal Barrier Resources Act; or

(6) Housing located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i)(A) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79); or

(B) Less than a year has passed since FEMA notification regarding such hazards; and

(ii) The HA will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(7) A public housing or Indian housing unit.

(c) An HA may attach assistance under this part 983 to a highrise elevator project for families with children only if HUD determines there is no practical alternative. HUD may make this determination for an HA's project-based

assistance, in whole or in part, and need not review each project on a case-by-case basis.

(d) An HA may attach assistance to units under this part 983 for use as single room occupancy (SRO) housing only if:

(1) The property is located in an area in which there is a significant demand for these units, as determined by the HUD field office;

(2) The HA and the unit of general local government in which the property is located approve the attaching of assistance to these units; and

(3) The HA and the unit of general local government certify to HUD that the property meets applicable local health and safety standards.

(e) Assistance may not be attached to a unit that is occupied by an owner; however, cooperatives are considered to be rental housing for purposes of this part 983.

(f) In no event may any occupant of a unit with project-based assistance under this part 983 receive the benefit of any of the following: any other form of Section 8 assistance, rent supplement, Section 23 housing assistance, or Section 236 "deep subsidy" rental assistance payments.

(g)(1) *HA-owned unit* means a unit (other than public housing) that is owned by the HA which administers the assistance under this part 983 pursuant to an ACC between HUD and the HA (including a unit owned by an entity substantially controlled by the HA).

(2) An HA-owned unit may only be assisted under the project-based certificate program if:

(i) The HA-owned unit is not ineligible housing under this section.

(ii) The HUD field office selects the HA-owned unit pursuant to the competitive ranking and rating process specified in the HA's HUD-approved unit selection policy (see § 983.51).

(iii) The HUD field office establishes the initial contract rents.

(iv) The HUD field office has conducted all HA reviews required under this part before execution of the Agreement.

(3) Any adjustment of the contract rent for an HA-owned unit must be approved in advance by the HUD field office.

(4) As owner of an HA-owned unit, the HA is subject to all of the same program requirements that apply to other owners in the program.

(5) HUD headquarters establishes the amount of the administrative fee for an HA-owned unit. The HA will earn a lower ongoing administrative fee for an HA-owned unit than for a unit not owned by the HA, and no fee for the

cost to help a family experiencing difficulty in renting appropriate housing.

(6) HA-owned units are subject to the same requirements as units that are not HA-owned, including the ineligibility of units that are currently public or Indian housing and units constructed or rehabilitated with other assistance under the U.S. Housing Act of 1937.

**§ 983.8 Rehabilitation: Minimum expenditure requirement.**

(a) To qualify as rehabilitation under this part 983, existing structures must require a minimum expenditure of \$1000 per assisted unit, including the unit's prorated share of work to be accomplished on common areas or systems, in order to:

(1) Upgrade the property to decent, safe, and sanitary condition to comply with the housing quality standards or other standards approved by HUD, from a condition below those standards;

(2) Repair or replace major building systems or components in danger of failure within two years from the date of the initial HA inspection;

(3) Convert or merge units to provide housing for large families; or

(4) For up to seven percent of the units to be assisted, make accessibility improvements to the property necessary to meet the requirements of Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988.

(b) In determining the minimum expenditure of \$1000 per assisted unit, the HA must include the prorated cost of common improvements in the costs of the individual units.

**§ 983.9 Prohibition against new construction or rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP contract.**

(a) Assistance may not be attached to any unit which was in the five years before execution of the Agreement, or will be, constructed or rehabilitated with other assistance under the U.S. Housing Act of 1937 (*e.g.*, public housing (development or modernization), rental rehabilitation grants under 24 CFR part 511, housing development grants under 24 CFR part 850, or other Section 8 programs). In addition, a unit to which assistance is to be attached under this part 983 may not be rehabilitated with flexible subsidy assistance under part 219 of this title. HUD may approve attachment of assistance to a unit that was rehabilitated with public housing modernization funds before conveyance to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s) if

attachment of project-based assistance would further the purposes of the sale of the public housing project to the corporation.

(b) If an owner is proposing to pledge the Agreement or HAP contract as security for financing, the owner must submit the financing documents to the HA. In determining the approvability of a pledge arrangement, the HA must review the documents submitted by the owner to ensure that the financing documents do not modify the Agreement or HAP contract, and do not contain any requirements inconsistent with the Agreement or HAP contract. Any pledge of the Agreement or HAP contract must be limited to amounts payable under the HAP contract in accordance with the terms of the HAP contract.

**§ 983.10 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, an owner must assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a rehabilitation project assisted under this part.

(2) Whenever a building or complex is rehabilitated and some, but not all, of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section cover the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion of the project; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24. A "displaced person" must be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3600-3620), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person must also be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the HA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the HA. A person who is dissatisfied with the HA's determination on the appeal may submit a written request for review of that determination to the HUD field office responsible for administering the URA requirements in the jurisdiction.

(f) *Responsibility of HA.* (1) The HA must provide assurance of compliance as required by 49 CFR part 24 that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the HA to comply with these provisions.

(2) The cost of required relocation assistance may be paid for with funds provided by the owner, or with local public funds, or with funds available from other sources. The cost of HA advisory services for temporary relocation of tenants may be paid from preliminary fees or ongoing administrative fees.

(3) The HA must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The HA must maintain data on the race, ethnicity, gender, and disability of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the owner requiring such move, if the move occurs on or after the date of the submission of the owner application to the HA;

(ii) A person who moves permanently before the submission of the owner application to the HA, if the HA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building or complex, permanently, after execution of the Agreement between the owner and the HA, if the move occurs before the tenant is provided written notice offering the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the Agreement and estimated average monthly utility costs; or

(B) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building or complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit and any increased housing costs; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building or complex permanently after he or she has been required to move to another dwelling unit in the same building or complex in order to carry out the rehabilitation or construction, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the HA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the owner application to the HA and, before signing a lease and commencing occupancy, was provided written notice of the owner application, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) if the owner application is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The HA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the Agreement between the owner and the HA.

#### § 983.11 Other Federal requirements.

(a) *Equal Opportunity and related requirements.* Participation in this program requires compliance with the Equal Opportunity requirements specified in § 982.53 of this chapter including Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8) and the Fair Housing Amendments Act of 1988 (24 CFR part 100).

(b) *Environmental requirements.* Activities under this part 983 are subject to HUD environmental regulations at 24 CFR part 58. An HA may not attach assistance to a unit unless, before the HA enters into an Agreement to provide project-based assistance for the unit:

(1) The unit of general local government within which the project is located that exercises land use responsibility or, as determined by HUD, the county or State has completed the environmental review required by 24 CFR part 58 and provided to the HA for submission to HUD the completed request for release of funds and certification; and

(2) HUD has approved the request for release of funds.

(c) *Other Federal requirements.* The following requirements must be met, if applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations in 24 CFR part 135;

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over \$10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises;

(6) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy; and

(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the construction or rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

(8) The provisions of part 24 of this title relating to the employment, engagement of services, awarding contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

#### § 983.12 Initial contract rents.

(a) *General.* Section 882.714 of this title, Initial contract rents, applies to the Section 8 PBC Program.

(b) *HA, HUD or Housing Credit Agency establishment of the initial*

*contract rents.* (1) The HA establishes the initial contract rents for PBC units that are neither HA-owned nor financed with a HUD insured or coinsured mortgage. The HA must contract with a state certified general appraiser who has no interest, direct or indirect, with the property. The appraiser will submit for the HA's review and approval a Form HUD-92273, Estimates of Market Rent by Comparison, for each unit type using comparable unsubsidized market-rate rental properties. In developing the rental estimates, the appraiser must not consider the proposed Section 8 assistance or any other Federal, state or local rent subsidies. The HA must certify that the initial contract rents are reasonable and not in excess of rents being charged for comparable unassisted units.

(2) The HUD field office approves the initial contract rents for HA-owned PBC units and projects financed with a HUD insured or coinsured multifamily mortgage.

(3) HUD or a Housing Credit Agency may reduce the initial contract rents as a result of a subsidy layering review.

#### § 983.13 Annual contract rent adjustments.

Section 882.715 (a)(1) and (b) of this title apply to the Section 8 PBC Program.

#### § 983.14 Special contract rent adjustments.

Section 882.715 (a)(2) and (b) of this title apply to the Section 8 PBC Program.

### Subpart B—Owner Application Submission to Agreement

#### § 983.51 HA unit selection policy, advertising, and owner application requirements.

(a) *General.* The HA must adopt a written policy establishing competitive procedures for owner submission of applications and for HA selection of units to which assistance is to be attached and must submit the policy to the HUD field office for review and approval. The HA must select units in accordance with its approved selection policy. The HA's written selection policy must comply with the requirements of paragraph (b) of this section.

(b) *Advertising requirements.* The HA must advertise in a newspaper of general circulation that the HA will accept applications for assistance under this part 983 for specific projects. The advertisement must be approved by the HUD field office and may not be published until after the later of HUD authorization to implement a project-based program or ACC execution. The

advertisement must: be published once a week for three consecutive weeks; specify an application deadline of at least 30 days after the date the advertisement is last published; specify the number of units the HA estimates it will be able to assist under the funding the HA is making available for this purpose; and state that only applications submitted in response to the advertisement will be considered.

(c) *Selection policy requirements.* The HA's written selection policy must identify, and specify the weight to be given to, the factors the HA will use to rank and select applications. These factors must include consideration of: site; design; previous experience of the owner and other participants in development, marketing, and management; and feasibility of the project as a whole (including likelihood of financing and marketability). The HA may add other factors, such as responsiveness to local objectives specified by the HA.

(d) *Owner application.* The owner's submission to the HA of applications containing:

(1) A description of the housing to be constructed or rehabilitated, including the number of units by size (square footage), bedroom count, bathroom count, sketches of the proposed new construction or rehabilitation, unit plans, listing of amenities and services, and estimated date of completion. For rehabilitation, the description must describe the property as is, and must also describe the proposed rehabilitation;

(2) Evidence of site control, and for new construction identification and description of the proposed site, site plan and neighborhood;

(3) Evidence that the proposed new construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that the needed rezoning is likely and will not delay the project;

(4) The proposed contract rent per unit, including an indication of which utilities, services, and equipment are included in the rent and which are not included. For those utilities that are not included in the rent, an estimate of the average monthly cost for each unit type for the first year of occupancy;

(5) A statement identifying:

(i) The number of persons (families, individuals, businesses and nonprofit organizations) occupying the property on the date of the submission of the application;

(ii) The number of persons to be displaced, temporarily relocated or moved permanently within the building or complex;

(iii) The estimated cost of relocation payments and services, and the sources of funding; and

(iv) The organization(s) that will carry out the relocation activities;

(v) The identity of the owner and other project principals and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; certification showing that the above-mentioned parties are not on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; a disclosure of any possible conflict of interest by any of these parties that would be a violation of the Agreement or the HAP contract; and information on the qualifications and experience of the principal participants. Information concerning any participant who is not known at the time of the owner's submission must be provided to the HA as soon as the participant is known;

(vi) The owner's plan for managing and maintaining the units;

(vii) Evidence of financing or lender interest and the proposed terms of financing;

(viii) The proposed term of the HAP contract; and

(ix) Such other information as the HA believes necessary.

(e) *Resident management corporation competitive selection exception.* An HA may select units to which assistance is to be attached, without advertising under paragraph (b) of this section and without applying the selection factors otherwise required by paragraph (c) of this section, if attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s).

**§ 983.52 Rehabilitation: Initial inspection and determination of unit eligibility.**

(a) Before selecting a unit or executing an Agreement, the HA must determine that the application is responsive to and in compliance with the HA's written selection criteria and procedures, and is otherwise in conformity with HUD program regulations and requirements. For example, the owner must submit with the application evidence of site control and the certification required by § 983.51(d)(5)(v). The HA must determine that the proposed initial gross rents are within the fair market rent limitation under § 882.714 of this title. The HA must inspect the property to determine that rehabilitation has not begun and that the property meets the \$1000 per assisted unit rehabilitation

requirement under § 982.8 of this chapter. If the property meets this rehabilitation requirement, the HA must determine the specific work items that are needed to bring each unit to be assisted up to the housing quality standards specified in § 983.5 (or other standards as approved in the HA's application), to complete any other repairs needed to meet the \$1000 per assisted unit rehabilitation requirement and, in the case of projects of five or more units, any work items necessary to meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973.

(b) Before selecting a unit or executing an Agreement, the HA must also consider whether the property is eligible housing under § 983.7; meets the other Federal requirements in § 983.11 and the site and neighborhood standards cross-referenced in § 983.6; and will be rehabilitated with other than assistance under the U.S. Housing Act of 1937 in accordance with § 983.9. The HA must also determine the number of current tenants that are low-income families. An HA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

(c) Before executing an Agreement, the HA must contract with a State certified general appraiser and establish the rents in accordance with § 983.12, or seek and obtain the HUD-determined initial contract rents for any HA owned or controlled units or projects financed with a HUD insured or coinsured multifamily mortgage; obtain subsidy layering contract rent reviews from HUD or a Housing Credit Agency; obtain environmental clearance in accordance with § 983.11; submit a certification to the HUD field office stating that the unit or units were selected in accordance with the HA's approved unit selection policy; and receive approval from the HUD field office to execute an Agreement pursuant to the reviews required in § 983.53.

(d) When the HA administering the ACC or an entity substantially controlled by the HA administering the ACC has submitted an application, the HUD field office will select the owner applications. The HA must submit to the HUD field office all owner applications in response to the advertisement.

(e) The HUD field office may terminate the Agreement or HAP contract upon at least 30 days written notice to the owner by the HUD field office if the HUD field office determines at any time that the units were not selected in accordance with the HA's

approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

**§ 983.53 Rehabilitation: HUD field office review of applications.**

(a) The HUD field office must establish initial contract rents for any HA owned units or projects financed with a HUD insured or coinsured multifamily mortgage. HUD (or a Housing Credit Agency) must also conduct subsidy layering contract rent reviews.

(b) When the HA administering the ACC or an entity substantially controlled by the HA administering the ACC has submitted an application, the HA must submit to the HUD field office all owner applications in response to the advertisement. The HUD field office must review the owner applications and make the final selections based on the criteria in the HA selection policy approved by the HUD field office.

**§ 983.54 Rehabilitation: Work write-ups.**

The owner must prepare work write-ups and, where determined necessary by the HA, specifications and plans. The HA has flexibility to determine the appropriate documentation to be submitted by the owner based on the nature of the identified rehabilitation. The work write-ups must address the specific work items identified by the HA under § 983.52.

**§ 983.55 New construction: HA evaluation and technical processing.**

(a) Before selecting a unit or executing an Agreement, the HA must determine that the application is responsive to and in compliance with the HA's written selection criteria and procedures, and is otherwise in conformity with HUD program regulations and requirements. For example, the owner must submit with the application evidence of site control and the certification required by § 983.51(d)(5)(v). The HA must determine that construction (foundation work) has not begun. The HA must determine that the proposed initial gross rents are within the fair market rent limitation under § 983.12. The HA must also consider whether the property is eligible housing within the meaning of § 983.7; meets the other Federal requirements in § 983.11 and the site and neighborhood standards in § 983.6; will be constructed with other than assistance under the U.S. Housing Act of 1937 in accordance with § 983.9; and, in the case of projects of four or more units, whether any work items necessary to meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and the Fair

Housing Amendments Act of 1988 will be completed.

(b) Before executing an Agreement, the HA must contract with a State certified general appraiser and establish the rents in accordance with § 983.12 or seek and obtain the HUD-determined initial contract rents for any HA owned or controlled units or projects financed with a HUD insured or coinsured multifamily mortgage; seek and obtain subsidy layering contract rent reviews from HUD or a Housing Credit Agency; seek and obtain environmental clearance in accordance with § 983.11; and receive approval from the HUD field office to execute an Agreement pursuant to the reviews required in § 983.56.

(c) If the HA administering the ACC or an entity substantially controlled by the HA administering the ACC has submitted an application, the HA must submit to the HUD field office all owner applications in response to the advertisement. The HUD field office will select the owner applications to be funded from the applications received in response to the HA advertisement.

(d) If there are no HA-owned or controlled applicants, the HA must submit to the HUD field office for the site and neighborhood review only those applications determined by the HA to be eligible for further processing pursuant to paragraph (a) of this section, and must submit a certification to the HUD field office stating that the unit or units were selected in accordance with the HA's approved unit selection policy. The HA's submission must not exceed the number of uncommitted units for which the HA is authorized to project-base assistance in connection with new construction. If the number of units contained in applications the HA has determined to be eligible for further processing exceeds the number for which the HA is authorized to project-base assistance, the HA may submit only the top-ranked applications.

(e) The HUD field office may terminate the Agreement or HAP contract upon at least 30 days written notice to the owner by HUD if the HUD field office determines that the units were not selected in accordance with the HA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

**§ 983.56 New construction: HUD field office review of applications.**

(a) The HUD field office must review the owner applications submitted by an HA to determine compliance with requirements concerning the site and neighborhood standards in § 983.6.

(b) The HUD field office must establish initial contract rents for any HA owned units or projects financed with a HUD insured or coinsured multifamily mortgage. HUD (or a Housing Credit Agency) must also conduct subsidy layering contract rent reviews.

(c) When the HA administering the ACC or an entity substantially controlled by the HA administering the ACC has submitted an application, the HA must submit to the HUD field office all owner applications in response to the advertisement. The HUD field office must review the owner applications and make the final selections based on the criteria in the HA selection policy approved by the HUD field office.

**§ 983.57 New construction: Working drawings and specifications.**

Before an Agreement is executed for new construction units, the owner must submit the design architect's certification that the proposed new construction reflected in the working drawings and specifications complies with housing quality standards, local codes and ordinances, and zoning requirements.

**Subpart C—Agreement and New Construction or Rehabilitation Period**

**§ 983.101 Agreement to enter into HAP contract, and contract rents in Agreement.**

(a) *Agreement.* The HA must enter into an Agreement with the owner in the form prescribed by HUD for assistance provided under this part 983. The Agreement must be executed before the start of any new construction or rehabilitation. Under the Agreement, the owner agrees to construct the units in accordance with the HA-approved working drawings and specifications or to rehabilitate the units in accordance with the HA-approved work write-ups.

(b) *Contract rents in Agreement.* The Agreement must list the initial contract rents that will apply to the units after they are constructed or rehabilitated. The amounts of the contract rents that are listed in the Agreement or, if applicable, as lowered under § 983.103(c), must be the initial contract rents upon execution of the HAP contract. These initial contract rents may only be increased if:

(1) The project is financed with a HUD insured or coinsured multifamily mortgage;

(2) The initial contract rents listed in the Agreement were based on the amount determined by HUD to be necessary to amortize the insured or coinsured mortgage; and

(3) The HUD field office approves a cost increase prior to closing. In such a

case, the HUD field office may redetermine the initial contract rents in accordance with § 983.12 except that the field office may use the comparable rents originally used in processing the insured or coinsured mortgage in lieu of the amount determined in accordance with § 983.12.

**§ 983.102 Owner selection of contractor.**

The owner is responsible for selecting a competent contractor to undertake the new construction or rehabilitation work under the Agreement. The owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor, to perform such work, that fails to provide a certification that neither it nor its principals is presently debarred, suspended, or placed in ineligibility status under 24 CFR part 24, or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR part 5. The HA must promote opportunities for minority contractors to participate in the program.

**§ 983.103 New construction or rehabilitation period.**

(a) *Timely performance of work.* After the Agreement has been executed, the owner must promptly proceed with the construction or rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the HA may terminate the Agreement or take other appropriate action.

(b) *Inspections.* The HA must inspect during construction or rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement. The inspection must be carried out to ensure that the work meets the types of materials specified in the work write-ups or working drawings and specifications, and meets typical levels of workmanship in the area.

(c) *Changes.* The owner must obtain prior HA approval for any changes from the work specified in the Agreement that would alter the design or the quality of the required new construction or rehabilitation. The HA may disapprove any changes requested by the owner. HA approval of changes may be conditioned on establishing lower initial contract rents in the amount determined by the HA (or the HUD field office for HA owned units or projects financed with a HUD insured or coinsured multifamily mortgage). If the owner makes any changes without prior HA approval, the HA may lower the initial contract rents in the amount determined by the HA (or the HUD field

office for HA owned units or projects financed with a HUD insured or coinsured multifamily mortgage), and may require the owner to remedy any deficiencies, prior to, and as a condition for, acceptance of the units. Initial contract rents, however, must not be increased because of any change from the work specified in the Agreement as originally executed. When a HUD insured or a HUD coinsured multifamily mortgage is used to finance new construction or rehabilitation of the units to which assistance is to be attached under this part 983, the HUD field office may lower the initial contract rents to reflect any reduction in the amount necessary to amortize the insured or coinsured mortgage.

(d) *Notification of vacancies.* At least 60 days before the scheduled completion of the new construction or rehabilitation, the owner must notify the HA of any units expected to be vacant on the anticipated effective date of the HAP contract. The HA must refer to the owner appropriate-sized families from the HA waiting list. When the HAP contract is executed, the owner must notify the HA which units are vacant. (See also § 983.203).

**§ 983.104 New construction or rehabilitation completion.**

(a) *Notification of completion.* The owner must notify the HA when the work is completed and submit to the HA the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* To demonstrate completion of the work the owner must furnish the HA with:

(1) A certificate of occupancy or other official approvals as required by the locality.

(2) A certification by the owner that:

(i) The work has been completed in accordance with the requirements of the Agreement;

(ii) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy;

(iii) The unit(s) has been constructed or rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) Unit(s) built before 1978 is in compliance with § 982.401(j) (*Lead-based paint*); and

(v) The owner has complied with any applicable labor standards requirements in the Agreement.

(3) For projects where a HUD field office construction inspection is not

required during construction, a certification from the inspecting architect stating that the units have been constructed in accordance with the certified working drawings and specifications, housing quality standards, local codes and ordinances, and zoning requirements.

(c) *Review and inspections.* The HA must review the evidence of completion for compliance with paragraph (b) of this section. The HA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement, including meeting the housing quality standards or other standards approved by the HUD field office for the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(d) *Acceptance.* (1) If the HA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the HA must accept the unit(s).

(2) If there are any items of delayed completion that are minor items or that are incomplete because of weather conditions, and in any case that do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the HA may accept the unit(s). The HA must require the owner to deposit in escrow with the HA funds in an amount the HA determines to be sufficient to ensure completion of the delayed items. The HA and owner must also execute a written agreement, specifying the schedule for completion of these items. If the items are not completed within the agreed time period, the HA may terminate the HAP contract or exercise other rights under the HAP contract.

(3) If other deficiencies exist, the HA must determine whether and to what extent the deficiencies are correctable and whether a time extension is warranted, and HUD must determine whether the contract rents should be reduced.

(4) Otherwise, the unit(s) may not be accepted, and the owner must be notified with a statement of the reasons for nonacceptance.

**Subpart D—Housing Assistance Payments Contract**

**§ 983.151 Housing assistance payments contract (HAP contract).**

(a) *Required form.* The HA must enter into a HAP contract with the owner in the form prescribed by HUD for assistance provided under this part 983.

(b) *Term of HAP contract.* (1) The initial HAP contract term may not be

less than one year nor more than five years, and may not extend beyond the ACC expiration date for the funding source from which the HAP contract is to be funded.

(2) The contract authority for the funding source must exceed the estimated annual housing assistance payments for all tenant-based and project-based HAP contracts funded from the funding source.

(3) Within these limitations, the HA has the sole discretion to determine the HAP contract term. For example, assuming that the ACC expiration date for the applicable funding source is June 30, 1999, and the effective date of a HAP contract will be July 1, 1995, the HAP contract could have a fixed term of 1 to 4 years.

(c) *Renewal of HAP contracts.* With HUD field office approval and at the sole option of the HA, HAs may renew expiring HAP contracts for such period or periods as the HUD field office determines appropriate to achieve long-term affordability of the assisted housing, provided that the term does not extend beyond the ACC expiration date for the funding source. HAs must identify the funding source for renewals; different funding sources may be used for the initial term and renewal terms of the HAP contract. In addition to assessing whether the HAP contract should be renewed to achieve long term affordability, HUD will review an HA's renewal request to determine that the requirements listed in § 983.3(a) will be satisfied, and to determine if a rent reduction is warranted pursuant to 24 CFR part 12. The owner and owner's successors in interest must accept all HAP contract renewals agreed to by the HA and approved by HUD.

(d) *Time of execution.* The HA must execute the HAP contract if the HA accepts the unit(s) under § 983.104. The effective date of the HAP contract may not be earlier than the date of HA inspection and acceptance of the unit(s).

(e) *Units under lease.* After commencement of the HAP contract term, the HA must make the monthly housing assistance payments in accordance with the HAP contract for each unit occupied under lease by a family.

**§ 983.152 Reduction of number of units covered by HAP contract.**

(a) *Limitation on leasing to ineligible families.* Owners must lease all assisted units under HAP contract to eligible families. Leasing of vacant, assisted units to ineligible tenants is a violation of the HAP contract and grounds for all available legal remedies, including suspension or debarment from HUD

programs and reduction of the number of units under the HAP contract, as set forth in paragraph (b) of this section. Once the HA has determined that a violation exists, the HA must notify the HUD field office of its determination and the suggested remedies. At the direction of the HUD field office, the HA must take the appropriate action.

(b) *Reduction for failure to lease to eligible families.* If, at any time beginning 180 calendar days after the effective date of the HAP contract, the owner fails for a period of 180 continuous calendar days to have the assisted units leased to families receiving housing assistance or to families who were eligible when they initially leased the unit but are no longer receiving housing assistance, the HA may, on at least 30 calendar days notice, reduce the number of units covered by the HAP contract. The HA may reduce the number of units to the number of units actually leased or available for leasing by eligible families plus 10 percent (rounded up). If the owner has only one unit under HAP contract and if one year has elapsed since the date of the last housing assistance payment, the HAP contract may be terminated with the consent of the owner.

(c) *Restoration.* The HA will agree to an amendment of the HAP contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

- (1) The HA determines that the restoration is justified by demand,
- (2) The owner otherwise has a record of compliance with obligations under the HAP contract; and
- (3) Contract authority is available.

**Subpart E—Management**

**§ 983.201 Responsibilities of the HA.**

Section 982.153 of this chapter, *HA Responsibilities*, applies, except for § 982.153(b)(7) of this chapter, where it pertains to the HA issuing a voucher or certificate to each selected family and providing housing information to families selected, and § 982.153(b)(9) of this chapter. The HA must also:

- (a) Brief the family in accordance with § 983.203(d);
- (b) Obtain requests for participation from owners, and select projects;
- (c) Approve contract rent adjustments, and make rent reasonableness determinations for units which are not HA owned;
- (d) Inspect the project before, during, and upon completion of, new construction or rehabilitation; and
- (e) Ensure that the amount of assistance that is attached to units is

within the amounts available under the ACC.

**§ 983.202 Responsibilities of the owner.**

Section 982.452 of this chapter, *Owner responsibilities*, applies. The owner is also responsible for performing all of the owner responsibilities under the Agreement and the HAP contract, disclosing information and submitting certifications as required by 24 CFR part 12 and implementing instructions, providing the HA with a copy of any termination of tenancy notification, and offering vacant, accessible units to a Family with one or more members with a disability requiring that accessibility features of the vacant unit and occupying an assisted unit not having such features.

**§ 983.203 Family participation.**

Subpart E of part 982 of this chapter, *Selection for Tenant-based Program*, does not apply, except as it is expressly made applicable by this section.

(a) *HA selection for participation.* (1) The following provisions apply to this part: §§ 982.201, 982.202 except paragraph (b)(3), 982.203, 982.204 except paragraph (a) and (d), 982.205 except paragraph (a), 982.206, 982.207 except (b)(1), and 982.208 through 982.213 of this chapter.

(2) For purposes of this part, a family becomes a participant when the family and owner execute a lease for a unit with project-based assistance.

(3) An HA may use the tenant-based waiting list, a merged waiting list, or a separate PBC waiting list for admission to the PBC program. If the HA opts to have a separate PBC waiting list, the HA may use a single waiting list for all PBC projects, or may use a separate PBC waiting list for an area not smaller than a county or municipality.

(4) Except for special admissions and admissions pursuant to paragraph (c)(3) of this section, participants must be selected from the HA waiting list. The HA must select participants from the waiting list in accordance with admission policies in the HA administrative plan.

(5) *Local preference limit* means 30 percent of total annual waiting list admissions to an HA's PBC program (including admissions pursuant to paragraph (c)(3) of this section). In any year, the number of families given preference in admission to the HA PBC program pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(6) Has authorized to use the 30-percent limit to prevent prepayments under State mortgage programs must not

count families selected to occupy units in these State-assisted or subsidized projects against the local preference limit.

(7) The selection of eligible in-place families does not count against the local preference limit.

(b) *HA determination of eligibility of in-place families.* Before an HA selects a specific unit to which assistance is to be attached, the HA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. If the unit is occupied by an eligible family (including a single person) and the HA selects the unit, the family must be afforded the opportunity to lease that unit or another appropriately sized, project-based assisted unit in the project without requiring the family to be placed on the waiting list. (The HA is authorized, under § 812.3(b)(1) of this chapter and consistent with other applicable requirements of § 812.3, to permit occupancy of the project by single persons residing in the project at the time of conversion to project-based assistance to prevent displacement.) An HA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

(c) *Filling vacant units.* (1) When the owner notifies the HA of vacancies in the units to which assistance is attached, the HA will refer to the owner one or more families of the appropriate size on its waiting list. A family that refuses the offer of a unit assisted under this part 983 keeps its place on the waiting list.

(2) The owner must rent all vacant units to eligible families referred by the HA from its waiting list. The HA must determine eligibility for participation in accordance with HUD requirements.

(3) If the HA does not refer a sufficient number of interested applicants on the HA waiting list to the owner within 30 days of the owner's notification to the HA of a vacancy, the owner may advertise for or solicit applications from eligible very low-income families, or, if authorized by the HA in accordance with HUD requirements, low-income families. The owner must refer these families to the HA to determine eligibility.

(4)(i) The owner is responsible for screening and selection of tenants. The owner must adopt written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families, and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.

(ii)(A) An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

(B) If the owner rejects an applicant family who believes that the rejection was the result of unlawful discrimination, the family may request the assistance of the HA in resolving the issue. The family may also file a discrimination complaint with the HUD field office or exercise other rights provided by law.

(d) *Briefing of families.* When a family is selected to occupy a project-based unit, the HA must provide the family with information concerning the tenant rent and any applicable utility allowance and a copy of the HUD-prescribed lead-based paint brochure. The family must also, either in group or individual sessions, be provided with a full explanation of the following:

(1) Family and owner responsibilities under the lease and HAP contract;

(2) Information on Federal, State, and local equal opportunity laws;

(3) The fact that the subsidy is tied to the unit, that the family must occupy a unit constructed or rehabilitated under the program, and that a family that moves from the unit does not have any right to continued assistance;

(4) The likelihood of the family receiving a certificate after the HAP contract expires;

(5) The family's options under the program, if the family is required to move because of a change in family size or composition;

(6) Information on the HA's procedures for conducting informal hearings for participants, including a description of the circumstances in which the HA is required to provide the opportunity for an informal hearing (under § 983.208), and of the procedures for requesting a hearing.

(e) *Continued assistance for a family when the HAP contract is terminated.* If the HAP contract for the unit expires or if the HA terminates the HAP contract for the unit:

(1) The HA must issue the assisted family in occupancy of a unit a certificate of family participation for assistance under the HA's certificate program unless the HA has determined that it does not have sufficient funding for continued assistance for the family, or unless the HA denies issuance of a certificate in accordance with § 982.552 of this chapter.

(2) If the unit is not occupied by an assisted family, then the available funds under the ACC that were previously committed for support of the project-based assistance for the unit must be used for the HA's certificate program.

(f) *Amount of rent payable by family to owner.* The amount of rent payable by the Family to the owner must be the Tenant Rent.

(g) *Lease requirements.* (1) The lease between the family and the owner must be in accordance with § 983.207 and any other applicable HUD regulations and requirements. The lease must include all provisions required by HUD and must not include any of the provisions prohibited by HUD.

(2) When offering an accessible unit to an applicant not having disabilities requiring the accessibility features of the unit, the owner may require the applicant to agree (and may incorporate this agreement in the Lease) to move to a non-accessible unit when available.

#### § 983.204 Maintenance, operation and inspections.

(a) Section 982.404 of this chapter, *Maintenance: Owner and family responsibility; HA remedies*, pertaining to owner responsibilities and HA remedies, does not apply. Section 982.405 of this chapter, *HA periodic unit inspection*, and § 982.406 of this chapter, *Enforcement of HQS*, do not apply.

(b) *Maintenance and operation.* The owner must provide all the services, maintenance and utilities as agreed under the HAP contract, subject to abatement of housing assistance payments or other applicable remedies if the owner fails to meet these obligations.

(c) *Periodic inspection.* In addition to the inspections required prior to execution of the HAP contract, the HA must inspect or cause to be inspected each dwelling unit under HAP contract at least annually and at such other times as may be necessary to assure that the owner is meeting the obligations to maintain the unit in decent, safe and sanitary condition and to provide the agreed upon utilities and other services. The HA must take into account complaints and any other information coming to its attention in scheduling inspections.

(d) *Units not decent, safe and sanitary.* If the HA notifies the owner that the unit(s) under HAP contract are not being maintained in decent, safe and sanitary condition and the owner fails to take corrective action within the time prescribed in the notice, the HA may exercise any of its rights or remedies under the HAP contract, including abatement of housing assistance payments (even if the family continues in occupancy), termination of the HAP contract on the affected unit(s) and termination of assistance to the family

in accordance with § 982.552 of this chapter.

**§ 983.205 Reexamination of family income and composition.**

(a) Section 882.212 of this title, *Reexaminations of family income and composition*, does not apply.

(b) *Regular and interim reexaminations.* (1) The HA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the HA must make appropriate adjustments in the total tenant payment in accordance with part 813 of this title and determine whether the family's unit size is still appropriate (see § 982.402 of this chapter). The HA must adjust tenant rent and the housing assistance payment to reflect any change in total tenant payment.

(2) The family must supply any information requested by the HA or HUD concerning changes in income. If the HA receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the HA must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent, and housing assistance payment must be verified.

(3) The family must disclose and verify social security numbers (as provided by 24 CFR part 750) and must sign and submit consent forms for obtaining information in accordance with 24 CFR part 760 and 24 CFR part 813.

(c) *Continuation of housing assistance payments.* A family's eligibility for housing assistance payments shall continue until the total tenant payment equals the gross rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the

resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the HAP contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

**§ 983.206 Overcrowded and underoccupied units.**

(a) Section 982.403(a)(2) of this chapter, *Termination of HAP contract: violation of HQS space standards*; § 982.403(b) of this chapter, *Certificate program only: Termination of HAP contract—subsidy too big for family size*; and § 982.403(c) of this chapter, *Termination*, do not apply.

(b) If the HA determines that a contract unit is not decent, safe, and sanitary because of an increase in family size that causes the unit to be overcrowded or that a contract unit is larger than appropriate for the size of the family in occupancy under the HA's subsidy standards, housing assistance payments with respect to the unit may not be terminated for this reason. The owner, however, must offer the family a suitable alternative unit if one is available and the family shall be required to move. If the owner does not have available a suitable unit within the family's ability to pay the rent, the HA (if it has sufficient funding) must offer Section 8 assistance to the family or otherwise assist the family in locating other standard housing in the HA's jurisdiction within the family's ability to pay, and require the family to move to such a unit as soon as possible. The family must not be forced to move, nor shall housing assistance payments under the HAP contract be terminated for the reasons specified in this paragraph, unless the family rejects, without good reason, the offer of a unit that the HA judges to be acceptable.

**§ 983.207 Assisted tenancy and termination of tenancy.**

(a) Section 982.309 of this chapter, *Term of assisted tenancy*, and § 982.310

of this chapter, *Owner termination of tenancy*, do not apply.

(b) *Term of lease.* The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the HAP contract if the remaining term of the HAP contract is less than one year.

(c) *Move from unit.* The family must notify the HA and the owner before the family moves out of the unit.

(d) *Termination of tenancy.* (1) Subpart A of part 247 of this title, *Eviction from Certain Subsidized and HUD-Owned Projects*, applies, except § 247.4(d) of this title.

(2) The lease may contain a provision permitting the family to terminate the lease on not more than 60 days advance written notice to the owner. In the case of a lease term for more than one year, the lease must contain a provision permitting the family to terminate the lease on such notice after the first year of the term.

(3) The owner may offer the family a new lease for execution by the family for a term beginning at any time after the first year of the term of the lease. The owner must give the family written notice of the offer at least 60 days before the proposed commencement date of the new lease term. The offer may specify a reasonable time for acceptance by the family. Failure by the family to accept the offer of a new lease in accordance with this paragraph shall be "other good cause" for termination of tenancy (under § 247.3(a)(3) of this title).

**§ 983.208 Informal review.**

Section 982.554, *Informal review for applicant*, applies, except § 982.554(c)(3) of this chapter.

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**Joseph Shuldiner,**

*Assistant Secretary.*

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