

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of the Secretary
24 CFR Parts 5, 880, 881, 882, 883, 884, 885, 886, 889, 904, 960, 982, and 983
[Docket No. FR-3980-F-01]
RIN 2501-AC10
Regulatory Reinvention—Consolidation of Admission Preferences for Assisted Housing
AGENCY: Office of the Secretary, HUD.
ACTION: Final rule.

SUMMARY: This final rule amends the various program regulations governing assisted housing programs to remove the nearly identical provisions concerning admission preferences found in numerous parts of title 24 of the Code of Federal Regulations and adds several sections on this subject in 24 CFR part 5. The amendments made by this rule do not change the substance of the provisions but eliminate redundant provisions by placing in a general part the provisions that derive from parallel statutory provisions in the United States Housing Act of 1937.

EFFECTIVE DATE: April 5, 1996.

FOR FURTHER INFORMATION CONTACT: For the Section 8 project-based programs other than the Moderate Rehabilitation and Project-Based Certificate programs: Barbara Hunter, Director, Program Management Division, Office of

Housing, telephone (202) 708-3944 (voice).
 For the Section 8 Certificate, Voucher and Moderate Rehabilitation programs and for the public housing program: Linda Campbell, Director of Marketing, Leasing and Management Division, Office of Public and Indian Housing, telephone (202) 708-0744 (voice).
 Both of these officials are located at the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. For hearing- or speech-impaired persons, the above-stated telephone numbers may be accessed via TDD by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:
Paperwork Reduction Act Statement

There are no changes to the information collection requirements contained in these provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Background

The impetus for this rule is the Secretary's desire to simplify the Department's regulations. In response to the President's initiative to reinvent regulations, the Secretary has determined that the regulations

currently found in parts 880, 881, 882, 883, 884, 885, 886, 889, 904, 960, 982, and 983 concerning preferences in admission to assisted housing for persons that are involuntarily displaced, living in substandard housing, or paying more than 50 percent of income for rent, can be consolidated into one set of provisions to apply to these programs without changing the policies implemented by those provisions. This consolidation will eliminate 56 pages from the Department's regulations codified at title 24 of the Code of Federal Regulations.

The continuing resolution enacted on January 26, 1996, approving partial funding for the Department, provides that the statutory provisions on admissions preferences implemented by the regulations being consolidated in this rulemaking are suspended for Fiscal Year 1996. Therefore, this consolidated rule and the regulations that it amends have no effect until October 1, 1996.

II. Action

The nearly identical provisions in parts 880, 881, 882, 883, 884, 885, 889, 960, 982, and 983 shown in the following chart are being removed and consolidated in the corresponding sections of part 5. Cross references to those sections are revised to refer to the Federal preference provisions of 24 CFR part 5:

CORRESPONDING PREFERENCE PROVISIONS
 [New provision at head of column]

5.410	5.415	5.420	5.425	5.430
880.613	880.614	880.615	880.616	880.617
881.613	881.614	881.615	881.616	881.617
882.517	882.518	882.519	882.520	882.521
883.714	883.715	883.716	883.717	883.718
884.226	884.227	884.228	884.229	884.230
886.132	886.133	886.134	886.135	886.136
886.337				
889.611	889.612	889.613	889.614	889.615
904.122				
960.211	960.212	960.213	960.214	960.215
982.209	982.210	982.211	982.212	982.213
983.203				

Findings and Certifications

Justification for Final Rule

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that in this case, prior public

comment is unnecessary because the removal of nearly identical program requirements and consolidation of these provisions into a single part does not affect or establish policy. The primary purpose of this rule is to relocate provisions concerning admission preferences, not to revise them.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made 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 when the admission preference rules (FR-3122 and FR-3727) were promulgated as final rules. Those Findings of No Significant Impact are 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.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that actions taken in this rule do not have significant impact on States or their political subdivisions, since the rule merely relocates provisions regarding admission preferences for assisted housing.

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. Therefore, the proposed rule is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

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. The rule is limited to consolidating identical provisions found in various program regulations.

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 at the address stated above for review of the environmental finding.

Catalog

The Catalog of Federal Domestic Assistance numbers for the program affected by this rule are 14.157, 14.182, 14.850, and 14.856.

List of Subjects**24 CFR Part 5**

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 880

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

24 CFR Part 881

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

24 CFR Part 882

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

24 CFR Part 883

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

24 CFR Part 884

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

24 CFR Part 885

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

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

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

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, for the reasons stated in the preamble, parts 5, 880, 881, 882, 883, 884, 885, 886, 889, 904, 960, 982, and 983 of title 24 of the Code of Federal Regulations are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation is revised to read as follows:

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

2. New §§ 5.410, 5.415, 5.420, 5.425, and 5.430, are added to subpart D of part 5, to read as follows:

Subpart D—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

* * * * *

- 5.410 Selection preferences.
- 5.415 Federal preferences: general.
- 5.420 Federal preference: involuntary displacement.
- 5.425 Federal preference: substandard housing.
- 5.430 Federal preference: rent burden.

Subpart D—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

* * * * *

§ 5.410 Selection preferences.

(a) *Applicability.* The selection preferences that are described in this part are applicable to public housing and housing assisted under the Section 8 Housing Assistance Payments program. (Corresponding provisions applicable to the Indian housing program are found in 24 CFR part 950.) These preferences are administered by the entity responsible for admission functions in the programs covered (“responsible entity”), i.e., the public housing agency (“HA”) in the public housing and Section 8 Certificate/Voucher and Moderate Rehabilitation programs and the owner in all other Section 8 programs.

(b) *Types of preference.* There are three types of admission preferences:

(1) “Federal preferences” are admission preferences for three categories of families, as prescribed in 42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), 1437f(o)(3), and 1437f note. Federal preference is given for selection of families that are:

- (i) Involuntarily displaced;
- (ii) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or
- (iii) Paying more than 50 percent of family income for rent.

(2) "Ranking preferences" are preferences that may be established by the responsible entity to use in selecting among applicants that qualify for federal preferences.

(3) "Local preferences" are preferences for use in selecting among applicants without regard to their federal preference status. (See 42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), 1437f(o)(3), and 1437f note.)

(c) *System.* In the Section 8 programs other than the Certificate/Voucher and Moderate Rehabilitation programs, the owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(d) *Use of preference in selection process.* (1) *Factors other than federal and local preferences.* (i) *Characteristics of the unit.* For developments administered under the Section 8 New Construction and Substantial Rehabilitation programs and the public housing program, the responsible entity may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the responsible entity must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 24 CFR 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the responsible entity will give preference to elderly families and disabled families (see subpart D of part 960 or § 880.612a or § 881.612a of this title).

(ii) *Singles preference.* See § 5.405.

(2) *Local preference admissions.* (i) Local preferences may be adopted or amended by an HA to respond to local housing needs and priorities after the HA has conducted a public hearing.

(ii) For Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs operated under 24 CFR part 982, 983, and 882, respectively, if the owner wants to use preferences to select among applicants without regard to their federal preference status, it must use the local preference system adopted for use in the Section 8 Certificate/Voucher programs by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall

use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located. For the public housing program, the HA may use a local preference system it adopts for that program.

(iii) In the Section 8 programs other than the Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs operated under 24 CFR parts 982, 983 and 882, respectively, before an owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to ensure that they are applicable to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iv) In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit. "Local preference limit" means the following:

(A) For an HA's Section 8 Certificate/Voucher program operated under 24 CFR part 982, ten percent of annual waiting list admissions;

(B) For an HA's public housing program, fifty percent of annual admissions;

(C) For an HA's Section 8 Moderate Rehabilitation program, thirty percent of annual admissions;

(D) For Section 8 New Construction, Substantial Rehabilitation, and Loan Management/Property Disposition projects, thirty percent of annual admissions to each project; and

(E) For the Section 8 Project-Based Certificate program, thirty percent of total annual waiting list admissions to the HA's Project-Based Certificate program (including admissions pursuant to 24 CFR 983.203(c)(3)).

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* With respect to the Section 8 Certificate, Voucher, Loan Management, and Property Disposition programs and the public housing program, the HA may not give a preference (federal preference, local preference, or ranking preference) to an applicant if any member of the family is a person who was evicted during the past three years from housing assisted under a 1937 Housing Act program

because of drug-related criminal activity. However, the HA may give an admission preference in any of the following cases:

(i) If the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA;

(ii) If the HA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the HA determines that the evicted person no longer participates in any drug-related criminal activity.

(4) *Retention of federal preference status.* With respect to determining the preference status of an applicant for the Section 8 Certificate/Voucher programs, an applicant who is receiving tenant-based assistance under the HOME program (24 CFR part 92) and an applicant who resides in public or Indian housing of the same HA (and was on the tenant-based program waiting list when admitted to the HA's public or Indian housing on or after April 26, 1993), the HA determines whether the applicant qualifies for federal preference based on the situation of the applicant at the time the applicant began to receive tenant-based assistance under the HOME program or was admitted to the HA's public or Indian housing program (beginning of initial public or Indian housing lease).

(e) *Income-based admission.* (1) In public housing, the HA may only give preference to select a relatively higher income family for admission if the preference is pursuant to a "local preference" admission. (For other income-related restrictions on selection, see 24 CFR 913.105.)

(2) In Section 8 programs, the responsible entity may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(f) *Informing applicants about admission preferences.* (1) The responsible entity must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the responsible entity determines that the notification to all applicants on a waiting list required by paragraph (f)(1) of this section is impracticable because of the length of the list, the responsible entity may provide this notification to fewer than all applicants on the list at any given time. The responsible entity must, however, have notified a sufficient

number of applicants at any given time that, on the basis of the entity's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the responsible entity's framework for applying the preferences under paragraph (c) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(g) *Notice and opportunity for a meeting where preference is denied.* (1) If the responsible entity determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the responsible entity must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the responsible entity to review the determination. The meeting may be conducted by any person or persons designated by the responsible entity, who may be an officer or employee of the responsible entity, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(h) *Residency preferences.* A "residency preference" is a preference for admission of families that reside anywhere in a specified "residency preference area." A residency preference may be used as a ranking or local preference.

(1) *Section 8 programs other than Certificate/Voucher and Project-Based Certificate.* In these developments, local residency requirements are prohibited.

(2) *Section 8 Certificate/Voucher and Project-Based Certificate programs.* Any residency preference must be approved by HUD.

(i) A county or municipality may be used as a residency preference area.

(ii) An area smaller than a county or municipality may not be used as a residency preference area.

(3) *All projects.* With respect to any residency preference, applicants who are working or who have been notified

that they are hired to work in the residency preference area shall be treated as residents of the residency preference area. A residency preference may not be based on how long the applicant has resided in or worked in the residency preference area.

(i) *Nondiscrimination.* (1) Any selection preferences must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101-12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(Approved by the Office of Management and Budget under OMB control numbers 2577-0105 and 2502-0372.)

§ 5.415 Federal preferences: general.

(a) *Definitions.* The definitions of these preference categories stated in §§ 5.420, 5.425, and 5.430 must be used by the responsible entity, except that an HA may use its own alternative definitions if they have been approved by HUD.

(b) *Ranking preferences: selection among federal preference holders.* The responsible entity's system of administering the federal preferences (its admission policy, in the case of the Section 8 Certificate/Voucher programs) may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The responsible entity may give preference to working families—so long as the prohibition of § 5.410 against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not

violated. (If a responsible entity adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) A responsible entity may give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The responsible entity also may use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The ranking preferences may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular category of federal preference; or

(iii) Giving greater weight to a federal preference holder who fits a particular category of federal preference.

(c) *Qualifying for a federal preference.*

(1) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the responsible entity that the family qualifies for federal preference. The responsible entity must accept this certification, unless the responsible entity verifies that the applicant is not qualified for federal preference.

(2) *Verification of preference.* (i) Before admitting an applicant on the basis of a federal preference, the responsible entity must require the applicant to provide information needed by the responsible entity to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) In the case of Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs, the owner must use the verification procedures specified in § 5.420(c) (involuntary displacement); § 5.425(c) (substandard housing); and § 5.430(b) (rent burden). In the case of the Section 8 Certificate/Voucher, Project-Based

Certificate, and Moderate Rehabilitation programs and the public housing program, the HA may adopt its own verification procedure.

(iii) Once the responsible entity has verified an applicant's qualification for a federal preference, the responsible entity need not require the applicant to provide information needed by the responsible entity to verify such qualification again unless:

(A) The responsible entity determines reverification is desirable because a long time has passed since verification; or

(B) The responsible entity has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(3) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* With respect to Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate and Moderate Rehabilitation programs, HUD may specify additional conditions under which the federal preferences, as described in §§ 5.420, 5.425, and 5.430, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.) (Approved by the Office of Management and Budget under OMB control number 2502-0372 and 2577-0105.)

§ 5.420 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program.)

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the

family or verification by the responsible entity.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is

transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.* (i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence; or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The responsible entity must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the responsible entity has given advance written approval. If the family is admitted, the responsible entity may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The responsible entity may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The responsible entity must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* A private owner's verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of

displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible, and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 5.425 Federal preference: substandard housing.

(a) *When unit is substandard.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, Moderate Rehabilitation programs and the public housing program.) A unit is substandard if it:

- (1) Is dilapidated;
- (2) Does not have operable indoor plumbing;
- (3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;
- (4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;
- (5) Does not have electricity, or has inadequate or unsafe electrical service;
- (6) Does not have a safe or adequate source of heat;
- (7) Should, but does not, have a kitchen; or
- (8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.* (1) *Dilapidated unit.* A housing unit is dilapidated if:

- (i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or
- (ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(2) *Homeless family.* (i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes:

(A) Any person or family that lacks a fixed, regular, and adequate nighttime residence; and

(B) Any person or family that has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.* The following provisions are applicable to private owners:

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 5.430 Federal preference: rent burden.

(a) *Rent burden preference: how determined.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program.)

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(1) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program; or

(2) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(iv) For purposes of the Section 8 Certificate/Voucher programs, rent for an applicant who owns a manufactured home, but rents the space upon which it is located, includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements. In addition, for this program, rent for members of a cooperative means the charges under the occupancy agreement between the members and the cooperative.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using

the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement; or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

3. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Subpart F—Management

§ 880.603 [Amended]

4. Section 880.603 is amended by:

a. Amending the introductory text of paragraph (b) by removing the phrase "§§ 880.613 through 880.617." from the end of the paragraph, and adding in its place the phrase "24 CFR part 5.";

b. Amending paragraph (b)(1) introductory text by removing the term "§ 880.613(c)(2)" from the third sentence, and adding in its place the phrase "24 CFR part 5"; and

c. Amending paragraph (b)(2) by removing the term "§ 880.613(k)" from the fifth sentence, and adding in its place "24 CFR 5.410".

§ 880.612a [Amended]

5. In § 880.612a, paragraph (g) is amended by removing the term "§ 880.613" in the two places where it appears, and by adding the term "24 CFR part 5" in those two places.

§§ 880.613, 880.614, 880.615, 880.616, and 880.617 [Removed]

6. Sections 880.613, 880.614, 880.615, 880.616, and 880.617 are removed.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

7. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

Subpart F—Management

§ 881.603 [Amended]

8. Section 881.603 is amended by:

a. Amending the introductory text of paragraph (b) by removing the phrase "§§ 881.613 through 881.617" from the end of the paragraph, and adding in its place the phrase "24 CFR part 5";

b. Amending paragraph (b)(2) introductory text by removing the term "§ 881.613(c)(2)" from the third sentence, and adding in its place the phrase "24 CFR part 5"; and

c. Amending paragraph (b)(3) by removing the term "§ 881.613(k)" from the fifth sentence, and adding in its place the term "§ 24 CFR 5.410".

§ 881.612a [Amended]

9. In § 881.612a, paragraph (g) is amended by removing the term "§ 881.613" in the two places where it appears, and by adding the term "24 CFR part 5" in those two places.

§§ 881.613, 881.614, 881.615, 881.616, and 881.617 [Removed]

10. Sections 881.613, 881.614, 881.615, 881.616, and 881.617 are removed.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

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

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

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

§ 882.514 [Amended]

12. Section 882.514 is amended by:

a. Amending paragraph (a)(1) by adding, before the term "750" in the parenthetical phrase, the term "5, ", and by removing the last sentence, and

b. Amending the introductory text of paragraph (b) by removing the term "§ 882.517(c)(2)" from the fourth sentence, and adding in its place the phrase "24 CFR part 5".

§§ 882.517, 882.518, 882.519, 882.520, and 882.521 [Removed]

13. Sections 882.517, 882.518, 882.519, 882.520, and 882.521 are removed.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

14. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart G—Management of New Construction and Substantial Rehabilitation Projects

§ 883.704 [Amended]

15. Section 883.704 is amended by:
 a. Amending the introductory text of paragraph (b) by removing the phrase “parts 750 and 760 of chapter VII”, and adding in its place the phrase “24 CFR parts 5, 750, and 760”, and by removing the phrase “, including giving a Federal preference in accordance with § 883.714” from the end of the paragraph;

b. Amending paragraph (b)(2) by removing the term “§ 883.714(c)(2)” from the third sentence, and adding in its place the phrase “24 CFR part 5”; and

c. Amending paragraph (b)(3) by removing the term “883.714(k)” from the third sentence, and adding in its place “24 CFR 5.410”.

§ 883.704a [Amended]

15a. In § 883.704a, paragraph (g) is amended by removing the term “§ 883.714” in the two places it appears, and adding in its places the term “24 CFR part 5”.

§§ 883.714, 883.715, 883.716, 883.717, and 883.718 [Removed]

16. Sections 883.714, 883.715, 883.716, 883.717, and 883.718 are removed.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

17. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

17a. The table of contents for part 884 is amended to add the reference to “§ 884.223a Preference for occupancy by elderly families.”

Subpart B—Project Development and Operation

§ 884.214 [Amended]

18. Section 884.214 is amended as follows:

a. Paragraph (b)(1) is amended by removing the term “§ 884.226” from the

parenthetical phrase, and adding in its place the phrase “24 CFR part 5”;

b. Paragraph (b)(2) is amended by removing the term “§ 884.226(c)(2)” from the second sentence, and adding in its place the phrase “24 CFR part 5”; and

c. Paragraph (b)(7) is revised, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) * * *

(7) See 24 CFR part 5 for the informal review provisions for the denial of a Federal selection preference.

* * * * *

§ 884.223a [Amended]

19. In § 884.223a, paragraph (g) is amended by removing the term “§ 884.226” in the two places where it appears, and by adding in those places the phrase “24 CFR part 5”.

§§ 884.226, 884.227, 884.228, 884.229, and 884.230 [Removed]

20. Sections 884.226, 884.227, 884.228, 884.229, and 884.230 are removed.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

21. The authority citation for part 885 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

Subpart B—Section 202 Projects for the Elderly or Handicapped—Section 8 Assistance

§ 885.427 [Amended]

22. Section 885.427 is amended by removing the term “§§ 880.613–880.617 of this chapter” and adding in its place the phrase “24 CFR part 5, subpart D”.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

23. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

§ 886.119 [Amended]

24. In § 886.119, paragraph (a)(3) is amended by removing the term “§ 886.132” and adding in its place the phrase “24 CFR part 5”.

25. Section 886.132 is revised to read as follows:

§ 886.132 Selection preferences.

Sections 5.410 through 5.430 of this title govern the use of preferences in the selection of tenants under this subpart A.

§§ 886.133, 886.134, 886.135, and 886.136 [Removed]

26. Sections 886.133, 886.134, 886.135, and 886.136 are removed.

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

§ 886.337 [Amended]

27. Section 886.337 is amended by removing the phrase “Sections 886.132 through 886.136” and by adding the phrase “Sections 5.410 through 5.430”.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

28. The authority citation for part 889 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

Subpart F—Project Management

29. In § 889.610, paragraph (a) is revised to read as follows:

§ 889.610 Selection and admission of tenants.

(a) *Written procedures.* The owner shall adopt written tenant selection procedures that ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly persons; that are reasonably related to program eligibility and an applicant’s ability to perform the obligations of the lease; and that conform to the requirements on preferences contained in 24 CFR part 5. Owners shall promptly inform in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying for the program.

* * * * *

§§ 889.611, 889.612, 889.613, 889.614, and 889.615 [Removed]

30. Sections 889.611, 889.612, 889.613, 889.614, and 889.615 are removed.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

31. The authority citation for part 904 continues to read as follows:

Authority: 42 U.S.C. 1437–1437ee and 3535(d).

Subpart B—Turnkey III Program Description**§ 904.122 [Amended]**

32. Section 904.122 is amended by removing the phrase “§§ 960.211 through 960.215” and adding in its place the phrase “24 CFR 5.410 through 5.430”.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

33. The authority citation for part 960 continues to read as follows:

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

Subpart B—Admission, Rent and Reexamination**§ 960.203 [Removed and reserved]**

34. Section 960.203 is removed and reserved.

§ 960.204 [Amended]

35. In § 960.204, paragraph (a) is amended by adding after the word “chapter”, the phrase “and 24 CFR part 5”; and by removing paragraph (d).

§ 960.205 [Amended]

36. In § 960.205, paragraph (c) is amended by removing the two parenthetical phrases that read “(see § 960.211)” and “(But see § 960.211(d))”.

§ 960.206 [Amended]

37. In § 960.206, paragraph (a) is amended by removing the reference to “§ 960.211” and by adding in its place the phrase “24 CFR part 5”.

§ 960.207 [Amended]

38. In § 960.207, paragraph (a) is amended by removing the phrase “(see § 960.211)”.

§§ 960.211, 960.212, 960.213, 960.214, and 960.215 [Removed]

39. Sections 960.211, 960.212, 960.213, 960.214, and 960.215 are 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

40. The authority citation for part 982 continues to read as follows:

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

Subpart A—General Information**§ 982.3 [Amended]**

41. Section 982.3 is amended by removing the definitions of “*Federal preference*,” “*Federal preference holder*,” “*Local preference*,” “*Local preference limit*,” “*Ranking preference*,” “*Residency preference*,” and “*Residency preference area*.”

Subpart E—Admission to Tenant-Based Program**§ 982.202 [Amended]**

42. Section 982.202 is amended by:

- Redesignating paragraph (b)(4)(i) as paragraph (b)(4);
- Redesignating paragraphs (b)(4)(i)(A), (b)(4)(i)(B), (b)(4)(i)(C), (b)(4)(i)(D), and (b)(4)(i)(E), as paragraphs (b)(4)(i), (b)(4)(ii), (b)(4)(iii), (b)(4)(iv), and (b)(4)(v), respectively; and
- Removing paragraph (b)(4)(ii).

43. Section 982.207 is revised to read as follows:

§ 982.207 Waiting list: Use of preferences.

(a) The HA must use the following to select among applicants on the waiting list with the same preference status:

- Date and time of application; or
- A drawing or other random choice technique.

(b)(1) The method for selecting applicants from preference categories must be consistent with requirements governing federal preference and the singles preference, as described in 24 CFR part 5.

(2) In its system for applying the preferences described in 24 CFR part 5, the following provisions apply:

- The HA may limit the number of applicants that may qualify for any ranking preference or local preference.

(ii) The local preference limit only applies to admission of an applicant from the HA waiting list. A special admission is not counted against the local preference limit.

(iii) The local preference limit does not apply when an applicant is received in an HA program under portability procedures. The admission of a portability family by a receiving HA does not count against the receiving HA local preference limit. The admission of such a family (not qualified for federal preference) counts against the local preference limit of the initial HA.

(c) The method for selecting applicants from preference categories must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the administrative plan.

§§ 982.208, 982.209, 982.210, 982.211, 982.212, and 982.213 [Removed]

44. Sections 982.208, 982.209, 982.210, 982.211, 982.212, and 982.213 are removed.

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

45. The authority citation for part 983 continues to read as follows:

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

Subpart E—Management**§ 983.203 [Amended]**

46. Section 983.203 is amended as follows:

a. Paragraph (a)(1) is amended by removing the phrase, “except (b)(1), and 982.208 through 982.213 of this chapter”, and adding in its place the phrase, “and 24 CFR 5.410 through 5.430”; and

b. Paragraph (a)(5) is removed, and paragraphs (a)(6) and (a)(7) are redesignated as paragraphs (a)(5) and (a)(6), respectively.

Dated: February 22, 1996.

Henry G. Cisneros,

Secretary.

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