

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 983**

[Docket No. FR-5034-F-02]

RIN 2577-AC62

**Project-Based Voucher Rents for Units Receiving Low-Income Housing Tax Credits**

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the low-income housing tax credit (LIHTC) rent provisions of HUD's Project-Based Voucher (PBV) program regulations. This rule reinstates the regulatory provision where the LIHTC rent does not serve as a cap on rents in PBV projects receiving LIHTCs. The rule also re-emphasizes that public housing authorities (PHAs) may not enter into assistance contracts until HUD or an independent entity approved by HUD has conducted the required subsidy layering review and determined that the assistance is in accordance with HUD requirements. This final rule follows a May 1, 2007, proposed rule and takes into consideration public comments received on the proposed rule. HUD carefully considered the public comments, but adopts the proposed rule without change.

**DATES:** *Effective Date:* December 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** David Vargas, Director, Office of Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone number (202) 708-2815 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background**

On May 1, 2007, HUD published a proposed rule titled "Project-Based Voucher Rents for Units Receiving Low-Income Housing Tax Credits" (72 FR 24080-24081). This publication proposed to remove a regulatory cap on rents in PBV projects with units receiving LIHTCs. The regulatory cap limited the rent to owners on all units in projects receiving LIHTCs to the allowed LIHTC rent, which, in high fair market rent areas, could be less than the allowed project-based Section 8

program rents. This cap had been instituted in a comprehensive revision of the project-based Section 8 program regulations by a final rule published on October 13, 2005 (70 FR 59892 *et seq.*).

Once the cap was established by the October 2005 final rule, HUD received additional comments from PHAs and housing industry representatives expressing concern that this change would impede rather than promote HUD's goal of increasing and preserving affordable housing (see 72 FR 24080). HUD determined, therefore, that the cap would reduce the supply of needed low-income housing and issued the May 1, 2007, proposed rule to remedy the situation.

**II. Public Comments**

The public comment period for the proposed rule closed on July 2, 2007. HUD received 13 public comments from individuals, industry trade groups, PHAs, and low-income tenant interest groups. All of the comments supported the change that the May 2007 rule proposed to make to the PBV program regulations. A few commenters made suggestions for additional provisions to be added to the rule or for clarification to the regulatory text proposed by HUD in the May 2007 rule.

*Comment:* One commenter expressed concern that merely removing the reference to LIHTC from the list of program rent caps in § 983.304(c)(1) would still leave open the possibility, which the commenter thought remote, to restore the cap at some future time through application of § 983.304(c)(1)(v). Therefore, the commenter suggested that § 983.304(c)(1)(v) be revised to read "Any other type of federally subsidized project specified by HUD, except for projects receiving low-income housing tax credits."

*Response:* HUD has considered this suggestion, but declines to adopt it because, while HUD does not plan to reinstitute the LIHTC program caps in the foreseeable future, the suggested language would excessively limit HUD's discretion to respond to changing economic and programmatic conditions in the future.

*Comment:* Some commenters suggested that HUD delegate subsidy layering review to local government agencies.

*Response:* While changes to subsidy layering review, which extends to programs beyond LIHTC and Section 8 housing, are beyond the scope of this rulemaking, HUD will consider this suggestion for a future issuance.

**III. This Final Rule**

For the reasons provided in Section I of this preamble, this final rule adopts the proposed rule without change. This final rule revises § 983.304(c) to eliminate the requirement that the PBV rent to owner is capped at the tax-credit rent in projects receiving LIHTCs. The rule re-emphasizes that these projects are subject to HUD's subsidy layering review requirements, which ensure that excess subsidy is not provided.

**IV. Findings and Certifications***Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, as with the prior rulemaking that led to the October 13, 2005, final rule, remains exclusively concerned with PHAs that have chosen to "project-base" 20 percent of their Housing Choice Voucher program assistance. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. There are very few small PHAs in that category. In addition, this rule would cover only an even smaller category of PHAs—those with PBV Housing Assistance Payments contracts for units also receiving LIHTCs. The number of entities potentially affected by this rule is, therefore, not substantial.

*Environmental Impact*

This final rule involves establishment of external administrative or fiscal requirements related to a rate or cost determination, which does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local

governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number applicable to the

program affected by this proposed rule is 14.871.

#### **List of Subjects in 24 CFR Part 983**

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 983 as follows.

#### **PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM**

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

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

■ 2. Revise § 983.304(c) to read as follows:

**§ 983.304 Other subsidy: effect on rent to owner.**

\* \* \* \* \*

(c) *Subsidized projects.* (1) This paragraph (c) applies to any contract

units in any of the following types of federally subsidized project:

- (i) An insured or non-insured Section 236 project;
  - (ii) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
  - (iii) A Section 221(d)(3) below market interest rate (BMIR) project;
  - (iv) A Section 515 project of the Rural Housing Service;
  - (v) Any other type of federally subsidized project specified by HUD.
- (2) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in paragraph (c)(1) of this section.

\* \* \* \* \*

Dated: November 6, 2007.

**Orlando J. Cabrera,**

*Assistant Secretary for Public and Indian Housing.*

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