DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 985

[DOCKET NO. FR–5532–F–02]

RIN 2577–AC76

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

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

ACTION: Final rule.

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

DATES: Effective: July 2, 2012.

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

SUPPLEMENTARY INFORMATION:

I. Background—Proposed Rule

On September 23, 2011, HUD published in the Federal Register a proposed rule, at 76 FR 59069, that proposed to revise the process by which HUD measures and verifies performance under the SEMAP lease-up indicator. HUD initiated that proposal to align the SEMAP lease-up indicator with the process for measuring voucher management system leasing and cost data, which by statute must be done on a calendar year cycle.

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

As the preamble to the proposed rule further noted, in contrast to the process for measuring VMS leasing and cost data, the SEMAP lease-up indicator continues to measure a PHA’s lease-up rate on a fiscal year basis. The use of a calendar year for renewal funding, while using a fiscal year system for SEMAP measurements, has resulted in increased complexity for PHAs administering the HCV program and programmatic inefficiency. To eliminate such complexity, and reduce inefficiency in the HCV program resulting from two processes based on different periods of measurement, HUD, through the September 23, 2011, rule, proposed to amend the SEMAP regulations to provide for the SEMAP lease-up indicator to be measured based on a calendar year funding cycle, rather than the existing fiscal year cycle. The September 23, 2011, rule also proposed to clarify that units assisted under the voucher homeownership option or occupied under a project-based voucher (PBV) housing assistance payments (HAP) contract are included in the assessment of PHA units leased. These homeownership units and project-based voucher units have always been included in the assessment, but this is not explicit in current regulations.

II. Public Comments on Proposed Rule

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

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

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

HUD Response: HUD has not required year-end settlement statements from PHAs ever since the issuance of PIH Notice 2006–3 (section 5), which included the proposal to submit form HUD–52681, because the relevant information was being captured in the
should be counted as leased-up, at the PHA’s option.

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

HUD Response: The purpose of this rule is to establish a 12-month period from the PHA’s fiscal year to the calendar year. The identification of which units are included in the SEMAP leasing indicator was clarified in the proposed rule, not changed. It is not the purpose of this rule to change the type of HCV units included or excluded in the indicator. HUD intends to issue another proposed rule that will more comprehensively address the utilization indicator, as well as other SEMAP indicators. HUD will consider these comments in the development of that proposed rule.

Comment: Clarify Whether HCVs Award for Special Programs Are Included in the SEMAP Lease-Up Indicator. The same PHA recommended that HUD further clarify SEMAP by stating whether HCVs awarded for special programs are or are not included in the lease-up indicator. The commenter stated that many of those programs (most of which were created after SEMAP began) have separate procedures or requirements that reduce the PHA’s control over utilization, such as requiring referrals or services from other agencies. The commenter stated that SEMAP should not penalize the PHA if underutilization in those special programs reduces overall utilization. The commenter stated that it administers the following types of HCVs: Regular tenant-based HCVs; HCVs that the PHA has approved for PBV use (about 10 percent of its HCV allocation), disability HCVs (formerly Mainstream), HUD–Veterans Administration Supportive Housing (VASH) HCVs, and Family Unification Program (FUP) HCVs. The commenter requested that HUD advise if these HCVs are to be included in the SEMAP lease-up indicator. The commenter stated that subsidies for Section 8 Moderate Rehabilitation Single Room Occupancy (Mod Rehab SRO) units should not be evaluated under SEMAP, since these units are funded and operated separately from the other Section 8 programs.

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

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

The commenter, in further support of this suggested change, stated that the proposed rule strikes a better balance than current policy in that it acknowledges both that the leasing-up of new increments may be delayed for reasons beyond the PHA’s control and that the great majority of new HCVs require far less than 12 months to lease.
up. The commenter further stated that
the proposed SEMAP lease-up indicator
appears to count all leased HCVs in
the numerator, including those from new
increments, while excluding those
increments from the denominator
during the grace period, thereby
artificially raising the utilization rate for
affected agencies. The commenter stated
that shortening the grace period would
reduce the effect of this bias, and is also
more consistent with HUD’s renewal
funding policy in recent years that
assumes that all tenant protection HCVs
can be leased within 90 days of award.
The commenter stated that while PHAs
receiving new increments in the last
quarter of the calendar year would in
effect be held to a more demanding
standard under the proposed rule, the
impact on leasing performance is likely
to be small and justified by the
simplicity of a clear calendar year-based
measure.

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

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

_HUD Response:_ The Department did
not intend, through this rule, to change
the period of time that new units are
excluded from the utilization
calculation. Accordingly, this language
is clarified in the final rule. As pointed
out by the commenter, to exclude the
units just for the calendar year in which
they were awarded causes units to be
excluded for variable periods depending
on the month they are awarded, and
such exclusion would unfairly penalize
PHAs that receive new allocations late
in the assessed year. The Department
appreciates the commenter’s concerns
that a 12-month period may be too long
of a period for PHAs to be given to
utilize new HCVs. These comments will
be considered in the broader SEMAP
rule that is currently under
development. The Department will also
consider the comments regarding the
potential need for longer leasing time
for HCVs that serve special populations
or rely on third-party referrals, as well
as granting extensions to certain
increments on a case-by-case basis if
doing so would advance the goals of the
award.

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

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

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

_COMMENT:_ Determination of Funds
“Allocated” Should Include Certain
Renewal Funding.
The independent
nonprofit institute commenter stated
that a determination of funds
“allocated” should include renewal
funding for which PHAs are eligible,
after proration, but that is not provided
due to an offset of excess reserves (net
restricted assets). The commenter stated
that in 2008 and 2009, Congress
directed HUD to offset renewal funding
due PHAs under the prescribed renewal
formula by excess unspent funds from
prior years. (HUD requires PHAs to hold
such reserves in a “net restricted assets”
account.) The commenter stated that
there is a high likelihood that HUD will
be required or would opt to use similar
policies in 2012 and future years, and
that the premise of such an offset policy
is that PHAs will in fact use the offset
funds to support HCVs during the
calendar year. The commenter stated
that to align the measure of lease-up
performance with Congressional intent,
it is essential that funds offset are
included in the determination of
“allocated budget authority” that may
be used as the denominator in the rating
measure.

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

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

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

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

_HUD Response:_ See HUD’s response
to the second comment.

III. Findings and Certifications

_Regulatory Flexibility Act_

The Regulatory Flexibility Act (RFA)
(5 U.S.C. 601 et seq.) generally requires
an agency to conduct a regulatory
flexibility analysis of any rule subject to
notice and comment rulemaking
requirements, unless the agency certifies
that the rule will not have a significant
economic impact on a substantial
number of small entities. At the proposed rule stage, HUD certified that the proposed regulations would not have a significant economic impact on a substantial number of entities, and that assessment is not changed by this final rule. This rule is directed to increasing administrative efficiencies for PHAs, by aligning the cycle for renewal funding with the cycle for SEMAP measurements. This rule would also provide clarification for PHAs regarding units included in this measure.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to the means by which PHAs lease-up rates are measured. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 985

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

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

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

§ 985.3 Indicators, HUD verification methods, and ratings.

2. Revise § 985.3(n) as follows:

§ 985.3 Indicators, HUD verification methods, and ratings.

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

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

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

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

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

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


Sandra B. Henriquez,
Assistant Secretary for Public and Indian Housing.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0240]

RIN 1625–AA00

Safety Zone; Kemah Boardwalk Summer Season Fireworks, Galveston Bay, Kemah, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the specified waters in Galveston Bay in the vicinity of Kemah, Texas within a 1000’ radius around a fireworks barge. The safety zone is necessary to aid in the safety of mariners viewing the Kemah Boardwalk Summer Season Fireworks. During periods of enforcement, entry into the zone will not be permitted except as specifically authorized by the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule is effective from 8:30 p.m. on June 1, 2012 until 1 a.m. on January 1, 2013.