# HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT OF 2016

# Public Law 114–201
# 114th Congress

## An Act

July 29, 2016
[H.R. 3700]

To provide housing opportunities in the United States through modernization of various housing programs, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Housing Opportunity Through Modernization Act of 2016.
42 USC 1437 note.

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Housing Opportunity Through Modernization Act of 2016".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

# TITLE I—SECTION 8 RENTAL ASSISTANCE AND PUBLIC HOUSING

**SEC. 101. INSPECTION OF DWELLING UNITS.**

(a) IN GENERAL.—Section 8(o)(8) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(8)) is amended—

(1) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) INITIAL INSPECTION.— Determination.

"(i) IN GENERAL.—For each dwelling unit for which a housing assistance payment contract is established under this subsection, the public housing agency (or other entity pursuant to paragraph (11)) shall inspect the unit before any assistance payment is made to determine whether the dwelling unit meets the housing quality standards under subparagraph (B), except as provided in clause (ii) or (iii) of this subparagraph.

"(ii) CORRECTION OF NON-LIFE-THREATENING CONDITIONS.—In the case of any dwelling unit that is determined, pursuant to an inspection under clause (i), not to meet the housing quality standards under subparagraph (B), assistance payments may be made for the unit notwithstanding subparagraph (C) if failure to meet such standards is a result only of non-life-threatening conditions, as such conditions are established by the Secretary. A public housing agency making assistance payments pursuant to this clause for a dwelling unit shall, 30 days after the beginning of the period for which such payments are made, withhold any assistance payments for the unit if any deficiency resulting in noncompliance with the housing quality standards has not been corrected by such time. The public housing agency shall recommence assistance payments when such deficiency has been corrected, and may use any payments withheld to make assistance payments relating to the period during which payments were withheld. Time period.

"(iii) USE OF ALTERNATIVE INSPECTION METHOD FOR INTERIM PERIOD.—In the case of any property that within the previous 24 months has met the requirements of an inspection that qualifies as an alternative inspection method pursuant to subparagraph (E), a public housing agency may authorize occupancy before the inspection under clause (i) has been completed, and may make assistance payments retroactive to the beginning of the lease term after the unit has been determined pursuant to an inspection under clause (i) to meet the housing quality standards under

subparagraph (B). This clause may not be construed to exempt any dwelling unit from compliance with the requirements of subparagraph (D).";

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) ENFORCEMENT OF HOUSING QUALITY STANDARDS.—

Contracts.

"(i) DETERMINATION OF NONCOMPLIANCE.—A dwelling unit that is covered by a housing assistance payments contract under this subsection shall be considered, for purposes of subparagraphs (D) and (F), to be in noncompliance with the housing quality standards under subparagraph (B) if—

"(I) the public housing agency or an inspector authorized by the State or unit of local government determines upon inspection of the unit that the unit fails to comply with such standards;

"(II) the agency or inspector notifies the owner of the unit in writing of such failure to comply; and

Time periods.

"(III) the failure to comply is not corrected—

"(aa) in the case of any such failure that is a result of life-threatening conditions, within 24 hours after such notice has been provided; and

"(bb) in the case of any such failure that is a result of non-life-threatening conditions, within 30 days after such notice has been provided or such other reasonable longer period as the public housing agency may establish.

"(ii) WITHHOLDING OF ASSISTANCE AMOUNTS DURING CORRECTION.—The public housing agency may withhold assistance amounts under this subsection with respect to a dwelling unit for which a notice pursuant to clause (i)(II), of failure to comply with housing quality standards under subparagraph (B) as determined pursuant to an inspection conducted under subparagraph (D) or (F), has been provided. If the unit is brought into compliance with such housing quality standards during the periods referred to in clause (i)(III), the public housing agency shall recommence assistance payments and may use any amounts withheld during the correction period to make assistance payments relating to the period during which payments were withheld.

"(iii) ABATEMENT OF ASSISTANCE AMOUNTS.—The public housing agency shall abate all of the assistance amounts under this subsection with respect to a dwelling unit that is determined, pursuant to clause (i) of this subparagraph, to be in noncompliance with housing quality standards under subparagraph (B). Upon completion of repairs by the public housing agency or the owner sufficient so that the dwelling unit complies with such housing quality standards, the agency shall recommence payments under the

housing assistance payments contract to the owner of the dwelling unit.

"(iv) NOTIFICATION.—If a public housing agency providing assistance under this subsection abates rental assistance payments pursuant to clause (iii) with respect to a dwelling unit, the agency shall, upon commencement of such abatement—

"(I) notify the tenant and the owner of the dwelling unit that—

"(aa) such abatement has commenced; and

"(bb) if the dwelling unit is not brought into compliance with housing quality standards within 60 days after the effective date of the determination of noncompliance under clause (i) or such reasonable longer period as the agency may establish, the tenant will have to move; and Time period.

"(II) issue the tenant the necessary forms to allow the tenant to move to another dwelling unit and transfer the rental assistance to that unit.

"(v) PROTECTION OF TENANTS.—An owner of a dwelling unit may not terminate the tenancy of any tenant because of the withholding or abatement of assistance pursuant to this subparagraph. During the period that assistance is abated pursuant to this subparagraph, the tenant may terminate the tenancy by notifying the owner.

"(vi) TERMINATION OF LEASE OR ASSISTANCE PAYMENTS CONTRACT.—If assistance amounts under this section for a dwelling unit are abated pursuant to clause (iii) and the owner does not correct the noncompliance within 60 days after the effective date of the determination of noncompliance under clause (i), or such other reasonable longer period as the public housing agency may establish, the agency shall terminate the housing assistance payments contract for the dwelling unit. Time period.

"(vii) RELOCATION.—

"(I) LEASE OF NEW UNIT.—The agency shall provide the family residing in such a dwelling unit a period of 90 days or such longer period as the public housing agency determines is reasonably necessary to lease a new unit, beginning upon termination of the contract, to lease a new residence with tenant-based rental assistance under this section. Time period.

"(II) AVAILABILITY OF PUBLIC HOUSING UNITS.—If the family is unable to lease such a new residence during such period, the public housing agency shall, at the option of the family, provide such family a preference for occupancy in a dwelling unit of public housing that is owned or operated by the agency that first becomes available for occupancy after the expiration of such period.

"(III) ASSISTANCE IN FINDING UNIT.—The public housing agency may provide assistance to the family in finding a new residence, including

use of up to two months of any assistance amounts withheld or abated pursuant to clause (ii) or (iii), respectively, for costs directly associated with relocation of the family to a new residence, which shall include security deposits as necessary and may include reimbursements for reasonable moving expenses incurred by the household, as established by the Secretary. The agency may require that a family receiving assistance for a security deposit shall remit, to the extent of such assistance, the amount of any security deposit refunds made by the owner of the dwelling unit for which the lease was terminated.

Determination.

"(viii) TENANT-CAUSED DAMAGES.—If a public housing agency determines that any damage to a dwelling unit that results in a failure of the dwelling unit to comply with housing quality standards under subparagraph (B), other than any damage resulting from ordinary use, was caused by the tenant, any member of the tenant's household, or any guest or other person under the tenant's control, the agency may waive the applicability of this subparagraph, except that this clause shall not exonerate a tenant from any liability otherwise existing under applicable law for damages to the premises caused by such tenant.

Contracts.

"(ix) APPLICABILITY.—This subparagraph shall apply to any dwelling unit for which a housing assistance payments contract is entered into or renewed after the date of the effectiveness of the regulations implementing this subparagraph.".

Notice. Regulations. 42 USC 1437f note.

(b) EFFECTIVE DATE.—The Secretary of Housing and Urban Development shall issue notice or regulations to implement subsection (a) of this section and such subsection shall take effect upon such issuance.

**SEC. 102. INCOME REVIEWS.**

(a) INCOME REVIEWS FOR PUBLIC HOUSING AND SECTION 8 PROGRAMS.—Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a) is amended—

(1) in subsection (a)—

(A) in the second sentence of paragraph (1), by striking "at least annually" and inserting "pursuant to paragraph (6)"; and

(B) by adding at the end the following new paragraphs:

"(6) REVIEWS OF FAMILY INCOME.—

"(A) FREQUENCY.—Reviews of family income for purposes of this section shall be made—

"(i) in the case of all families, upon the initial provision of housing assistance for the family;

"(ii) annually thereafter, except as provided in paragraph (1) with respect to fixed-income families;

"(iii) upon the request of the family, at any time the income or deductions (under subsection (b)(5)) of the family change by an amount that is estimated to result in a decrease of 10 percent (or such lower amount as the Secretary may, by notice, establish,

or permit the public housing agency or owner to establish) or more in annual adjusted income; and

"(iv) at any time the income or deductions (under subsection (b)(5)) of the family change by an amount that is estimated to result in an increase of 10 percent or more in annual adjusted income, or such other amount as the Secretary may by notice establish, except that any increase in the earned income of a family shall not be considered for purposes of this clause (except that earned income may be considered if the increase corresponds to previous decreases under clause (iii)), except that a public housing agency or owner may elect not to conduct such review in the last three months of a certification period. Time period.

"(B) IN GENERAL.—Reviews of family income for purposes of this section shall be subject to the provisions of section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544).

"(7) CALCULATION OF INCOME.—

"(A) USE OF CURRENT YEAR INCOME.—In determining family income for initial occupancy or provision of housing assistance pursuant to clause (i) of paragraph (6)(A) or pursuant to reviews pursuant to clause (iii) or (iv) of such paragraph, a public housing agency or owner shall use the income of the family as estimated by the agency or owner for the upcoming year.

"(B) USE OF PRIOR YEAR INCOME.—In determining family income for annual reviews pursuant to paragraph (6)(A)(ii), a public housing agency or owner shall, except as otherwise provided in this paragraph and paragraph (1), use the income of the family as determined by the agency or owner for the preceding year, taking into consideration any redetermination of income during such prior year pursuant to clause (iii) or (iv) of paragraph (6)(A).

"(C) OTHER INCOME.—In determining the income for any family based on the prior year's income, with respect to prior year calculations of income not subject to subparagraph (B), a public housing agency or owner may make other adjustments as it considers appropriate to reflect current income.

"(D) SAFE HARBOR.—A public housing agency or owner may, to the extent such information is available to the public housing agency or owner, determine the family's income prior to the application of any deductions based on timely income determinations made for purposes of other means-tested Federal public assistance programs (including the program for block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act, a program for Medicaid assistance under a State plan approved under title XIX of the Social Security Act, and the supplemental nutrition assistance program (as such term is defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012))). The Secretary shall, in consultation with other appropriate Federal agencies, develop electronic procedures to enable public housing agencies and owners to have access to such benefit determinations made by other means-tested Federal programs Consultation. Procedures.

that the Secretary determines to have comparable reliability. Exchanges of such information shall be subject to the same limitations and tenant protections provided under section 904 of the Stewart B. McKinney Homeless Assistance Act Amendments of 1988 (42 U.S.C. 3544) with respect to information obtained under the requirements of section 303(i) of the Social Security Act (42 U.S.C. 503(i)).

"(E) ELECTRONIC INCOME VERIFICATION.—The Secretary shall develop a mechanism for disclosing information to a public housing agency for the purpose of verifying the employment and income of individuals and families in accordance with section 453(j)(7)(E) of the Social Security Act (42 U.S.C. 653(j)(7)(E)), and shall ensure public housing agencies have access to information contained in the 'Do Not Pay' system established by section 5 of the Improper Payments Elimination and Recovery Improvement Act of 2012 (Public Law 112–248; 126 Stat. 2392).

"(F) PHA AND OWNER COMPLIANCE.—A public housing agency or owner may not be considered to fail to comply with this paragraph or paragraph (6) due solely to any de minimis errors made by the agency or owner in calculating family incomes.";

(2) by striking subsections (d) and (e); and

(3) by redesignating subsection (f) as subsection (d).

Deadline. Time period. Effective date.

(b) CERTIFICATION REGARDING HARDSHIP EXCEPTION TO MINIMUM MONTHLY RENT.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a certification that the hardship and tenant protection provisions in clause (i) of section 3(a)(3)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(3)(B)(i)) are being enforced at such time and that the Secretary will continue to provide due consideration to the hardship circumstances of persons assisted under relevant programs of this Act.

(c) INCOME; ADJUSTED INCOME.—Section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)) is amended by striking paragraphs (4) and (5) and inserting the following new paragraphs:

Definition. Criteria. Consultation.

"(4) INCOME.—The term 'income' means, with respect to a family, income received from all sources by each member of the household who is 18 years of age or older or is the head of household or spouse of the head of the household, plus unearned income by or on behalf of each dependent who is less than 18 years of age, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture, subject to the following requirements:

"(A) INCLUDED AMOUNTS.—Such term includes recurring gifts and receipts, actual income from assets, and profit or loss from a business.

"(B) EXCLUDED AMOUNTS.—Such term does not include—

"(i) any imputed return on assets, except to the extent that net family assets exceed $50,000, except that such amount (as it may have been previously adjusted) shall be adjusted for inflation annually by

the Secretary in accordance with an inflationary index selected by the Secretary;

"(ii) any amounts that would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7));

"(iii) deferred disability benefits from the Department of Veterans Affairs that are received in a lump sum amount or in prospective monthly amounts;

"(iv) any expenses related to aid and attendance under section 1521 of title 38, United States Code, to veterans who are in need of regular aid and attendance; and

"(v) exclusions from income as established by the Secretary by regulation or notice, or any amount required by Federal law to be excluded from consideration as income.

"(C) EARNED INCOME OF STUDENTS.—Such term does not include—

"(i) earned income, up to an amount as the Secretary may by regulation establish, of any dependent earned during any period that such dependent is attending school or vocational training on a full-time basis; or

"(ii) any grant-in-aid or scholarship amounts related to such attendance used—

"(I) for the cost of tuition or books; or

"(II) in such amounts as the Secretary may allow, for the cost of room and board.

"(D) EDUCATIONAL SAVINGS ACCOUNTS.—Income shall be determined without regard to any amounts in or from, or any benefits from, any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code. Determination.

"(E) RECORDKEEPING.—The Secretary may not require a public housing agency or owner to maintain records of any amounts excluded from income pursuant to this subparagraph.

"(5) ADJUSTED INCOME.—The term 'adjusted income' means, with respect to a family, the amount (as determined by the public housing agency or owner) of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any deductions from income as follows: Definition.

"(A) ELDERLY AND DISABLED FAMILIES.—$525 in the case of any family that is an elderly family or a disabled family.

"(B) MINORS, STUDENTS, AND PERSONS WITH DISABILITIES.—$480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.

"(C) CHILD CARE.—Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

"(D) HEALTH AND MEDICAL EXPENSES.—The amount, if any, by which 10 percent of annual family income is exceeded by the sum of—

"(i) in the case of any elderly or disabled family, any unreimbursed health and medical care expenses; and

"(ii) any unreimbursed reasonable attendant care and auxiliary apparatus expenses for each handicapped member of the family, if determined necessary by the public housing agency or owner to enable any member of such family to be employed.

Regulation.

The Secretary shall, by regulation, provide hardship exemptions to the requirements of this subparagraph and subparagraph (C) for impacted families who demonstrate an inability to pay calculated rents because of financial hardship. Such regulations shall include a requirement to notify tenants regarding any changes to the determination of adjusted income pursuant to such subparagraphs based on the determination of the family's claim of financial hardship exemptions required by the preceding sentence. Such regulations shall be promulgated in consultation with tenant organizations, industry participants, and the Secretary of Health and Human Services, with an adequate comment period provided for interested parties.

Notification.

Consultation.
Comment period.

Procedures.

"(E) PERMISSIVE DEDUCTIONS.—Such additional deductions as a public housing agency may, at its discretion, establish, except that the Secretary shall establish procedures to ensure that such deductions do not materially increase Federal expenditures.

Determination.
Applicability.
Regulation.

The Secretary shall annually calculate the amounts of the deductions under subparagraphs (A) and (B), as such amounts may have been previously calculated, by applying an inflationary factor as the Secretary shall, by regulation, establish, except that the actual deduction determined for each year shall be established by rounding such amount to the next lowest multiple of $25.".

(d) HOUSING CHOICE VOUCHER PROGRAM.—Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) is amended—

(1) in paragraph (1)(D), by inserting before the period at the end the following: ", except that a public housing agency may establish a payment standard of not more than 120 percent of the fair market rent where necessary as a reasonable accommodation for a person with a disability, without approval of the Secretary. A public housing agency may use a payment standard that is greater than 120 percent of the fair market rent as a reasonable accommodation for a person with a disability, but only with the approval of the Secretary. In connection with the use of any increased payment standard established or approved pursuant to either of the preceding two sentences as a reasonable accommodation for a person with a disability, the Secretary may not establish additional requirements regarding the amount of adjusted income paid by such person for rent"; and

(2) in paragraph (5)—

(A) in the paragraph heading, by striking "ANNUAL REVIEW" and inserting "REVIEWS";

(B) in subparagraph (A)—

(i) by striking "the provisions of" and inserting "paragraphs (1), (6), and (7) of section 3(a) and to"; and

(ii) by striking "and shall be conducted" and all that follows through the end of the subparagraph and inserting a period; and

(C) in subparagraph (B), by striking the second sentence.

(e) ENHANCED VOUCHER PROGRAM.—Section 8(t)(1)(D) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)(1)(D)) is amended by striking "income" each place such term appears and inserting "annual adjusted income".

(f) PROJECT-BASED HOUSING.—Paragraph (3) of section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(3)) is amended by striking the last sentence.

(g) IMPACT ON PUBLIC HOUSING REVENUES.—

42 USC 1437a note.

(1) ADJUSTMENTS TO OPERATING FORMULA.—If the Secretary of Housing and Urban Development determines that the application of subsections (a) through (e) of this section results in a material and disproportionate reduction in the rental income of certain public housing agencies during the first year in which such subsections are implemented, the Secretary may make appropriate adjustments in the formula income for such year of those agencies experiencing such a reduction.

Determination.

(2) HUD REPORTS ON REVENUE AND COST IMPACT.—In each of the first two years after the first year in which subsections (a) through (e) are implemented, the Secretary of Housing and Urban Development shall submit a report to Congress identifying and calculating the impact of changes made by such subsections and section 104 of this Act on the revenues and costs of operating public housing units, the voucher program for rental assistance under section 8 of the United States Housing Act of 1937, and the program under such section 8 for project-based rental assistance. If such report identifies a material reduction in the net income of public housing agencies nationwide or a material increase in the costs of funding the voucher program or the project-based assistance program, the Secretary shall include in such report recommendations for legislative changes to reduce or eliminate such a reduction.

Time periods.

Recommendations.

(h) EFFECTIVE DATE.—The Secretary of Housing and Urban Development shall issue notice or regulations to implement this section and this section shall take effect after such issuance, except that this section may only take effect upon the commencement of a calendar year.

Notice. Regulations. 42 USC 1437a note.

(i) STUDY ON IMPACT ON ELDERLY AND DISABLED FAMILIES OF DECREASED DEDUCTIONS IN INCOME.—

(1) STUDY.—The Secretary of Housing and Urban Development shall conduct a study to determine the impacts, on rents paid by elderly and disabled individuals and families assisted under the section 8 rental assistance and public housing programs under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), of any decreases in the amounts of any deductions from income (for purposes of section 3(b) of such Act (42 U.S.C. 1437a(b))), as compared to such deductions under such section 3(b) as in effect before the effectiveness of this section, resulting from the amendments made by this section.

Determination.

Time period.

(2) REPORT.—The Secretary shall submit to the Congress a report setting forth the results of the study conducted pursuant to paragraph (1) not later than the expiration of the 12-month period beginning on the date of the enactment of this Act.

(3) EFFECTIVE DATE.—Notwithstanding subsection (h) of this section, this subsection shall take effect on the date of the enactment of this Act.

**SEC. 103. LIMITATION ON PUBLIC HOUSING TENANCY FOR OVER-INCOME FAMILIES.**

Subsection (a) of section 16 of the United States Housing Act of 1937 (42 U.S.C. 1437n(a)) is amended by adding at the end the following new paragraph:

"(5) LIMITATIONS ON TENANCY FOR OVER-INCOME FAMILIES.—

"(A) LIMITATIONS.—Except as provided in subparagraph (D), in the case of any family residing in a dwelling unit of public housing whose income for the most recent two consecutive years, as determined pursuant to income reviews conducted pursuant to section 3(a)(6), has exceeded the applicable income limitation under subparagraph (C), the public housing agency shall—

"(i) notwithstanding any other provision of this Act, charge such family as monthly rent for the unit occupied by such family an amount equal to the greater of—

"(I) the applicable fair market rental established under section 8(c) for a dwelling unit in the same market area of the same size; or

Regulations.

"(II) the amount of the monthly subsidy provided under this Act for the dwelling unit, which shall include any amounts from the Operating Fund and Capital Fund under section 9 used for the unit, as determined by the agency in accordance with regulations that the Secretary shall issue to carry out this subclause; or

Deadline.

"(ii) terminate the tenancy of such family in public housing not later than 6 months after the income determination described in subparagraph (A).

"(B) NOTICE.—In the case of any family residing in a dwelling unit of public housing whose income for a year has exceeded the applicable income limitation under subparagraph (C), upon the conclusion of such year the public housing agency shall provide written notice to such family of the requirements under subparagraph (A).

Determination.

"(C) INCOME LIMITATION.—The income limitation under this subparagraph shall be 120 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income limitations higher or lower than 120 percent of such median income on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs, or unusually high or low family incomes, vacancy rates, or rental costs.

"(D) EXCEPTION.—Subparagraph (A) shall not apply to a family occupying a dwelling unit in public housing pursuant to paragraph (5) of section 3(a) (42 U.S.C. 1437a(a)(5)).

"(E) REPORTS ON OVER-INCOME FAMILIES AND WAITING LISTS.—The Secretary shall require that each public housing agency shall—

"(i) submit a report annually, in a format required by the Secretary, that specifies—

"(I) the number of families residing, as of the end of the year for which the report is submitted, in public housing administered by the agency who had incomes exceeding the applicable income limitation under subparagraph (C); and

"(II) the number of families, as of the end of such year, on the waiting lists for admission to public housing projects of the agency; and

"(ii) make the information reported pursuant to clause (i) publicly available.". Public information.

**SEC. 104. LIMITATION ON ELIGIBILITY FOR ASSISTANCE BASED ON ASSETS.**

Section 16 of the United States Housing Act of 1937 (42 U.S.C. 1437n) is amended by inserting after subsection (d) the following new subsection:

"(e) ELIGIBILITY FOR ASSISTANCE BASED ON ASSETS.—

"(1) LIMITATION ON ASSETS.—Subject to paragraph (3) and notwithstanding any other provision of this Act, a dwelling unit assisted under this Act may not be rented and assistance under this Act may not be provided, either initially or at each recertification of family income, to any family—

"(A) whose net family assets exceed $100,000, as such amount is adjusted annually by applying an inflationary factor as the Secretary considers appropriate; or

"(B) who has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell, real property that is suitable for occupancy by the family as a residence, except that the prohibition under this subparagraph shall not apply to—

"(i) any property for which the family is receiving assistance under subsection (y) or (o)(12) of section 8 of this Act;

"(ii) any person that is a victim of domestic violence; or

"(iii) any family that is offering such property for sale.

"(2) NET FAMILY ASSETS.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'net family assets' means, for all members of the household, the net cash value of all assets after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment. Such term does not include interests in Indian trust land, equity in property for which the family is receiving assistance under subsection (y) or (o)(12) of section 8, equity accounts in homeownership programs Definition.

of the Department of Housing and Urban Development, or Family Self Sufficiency accounts.

"(B) EXCLUSIONS.—Such term does not include—

"(i) the value of personal property, except for items of personal property of significant value, as the Secretary may establish or the public housing agency may determine;

"(ii) the value of any retirement account;

"(iii) real property for which the family does not have the effective legal authority necessary to sell such property;

"(iv) any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a member of the family and arising out of law, that resulted in a member of the family being disabled;

"(v) the value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and

"(vi) such other exclusions as the Secretary may establish.

"(C) TRUST FUNDS.—In cases in which a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund shall not be considered an asset of a family if the fund continues to be held in trust. Any income distributed from the trust fund shall be considered income for purposes of section 3(b) and any calculations of annual family income, except in the case of medical expenses for a minor.

"(3) SELF-CERTIFICATION.—

"(A) NET FAMILY ASSETS.—A public housing agency or owner may determine the net assets of a family, for purposes of this section, based on a certification by the family that the net assets of such family do not exceed $50,000, as such amount is adjusted annually by applying an inflationary factor as the Secretary considers appropriate.

Determination.

"(B) NO CURRENT REAL PROPERTY OWNERSHIP.—A public housing agency or owner may determine compliance with paragraph (1)(B) based on a certification by the family that such family does not have any current ownership interest in any real property at the time the agency or owner reviews the family's income.

"(C) STANDARDIZED FORMS.—The Secretary may develop standardized forms for the certifications referred to in subparagraphs (A) and (B).

"(4) COMPLIANCE FOR PUBLIC HOUSING DWELLING UNITS.—When recertifying family income with respect to families residing in public housing dwelling units, a public housing agency may, in the discretion of the agency and only pursuant to a policy that is set forth in the public housing agency plan under section 5A for the agency, choose not to enforce the limitation under paragraph (1).

"(5) ENFORCEMENT.—When recertifying the income of a family residing in a dwelling unit assisted under this Act,

a public housing agency or owner may choose not to enforce the limitation under paragraph (1) or may establish exceptions to such limitation based on eligibility criteria, but only pursuant to a policy that is set forth in the public housing agency plan under section 5A for the agency or under a policy adopted by the owner. Eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided.

"(6) AUTHORITY TO DELAY EVICTIONS.—In the case of a family residing in a dwelling unit assisted under this Act who does not comply with the limitation under paragraph (1), the public housing agency or project owner may delay eviction or termination of the family based on such noncompliance for a period of not more than 6 months. Time period.

"(7) VERIFYING INCOME.—

"(A) Beginning in fiscal year 2018, the Secretary shall require public housing agencies to require each applicant for, or recipient of, benefits under this Act to provide authorization by the applicant or recipient (or by any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient for such benefits) for the public housing agency to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act) from any financial institution (within the meaning of section 1101(1) of such Act) any financial record (within the meaning of section 1101(2) of such Act) held by the institution with respect to the applicant or recipient (or any such other person) whenever the public housing agency determines the record is needed in connection with a determination with respect to such eligibility or the amount of such benefits. Effective date. Records. Determination.

"(B) Notwithstanding section 1104(a)(1) of the Right to Financial Privacy Act, an authorization provided by an applicant or recipient (or any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient) pursuant to subparagraph (A) of this paragraph shall remain effective until the earliest of—

"(i) the rendering of a final adverse decision on the applicant's application for eligibility for benefits under this Act;

"(ii) the cessation of the recipient's eligibility for benefits under this Act; or

"(iii) the express revocation by the applicant or recipient (or such other person referred to in subparagraph (A)) of the authorization, in a written notification to the Secretary. Notification.

"(C)(i) An authorization obtained by the public housing agency pursuant to this paragraph shall be considered to meet the requirements of the Right to Financial Privacy Act for purposes of section 1103(a) of such Act, and need not be furnished to the financial institution, notwithstanding section 1104(a) of such Act.

"(ii) The certification requirements of section 1103(b) of the Right to Financial Privacy Act shall not apply to requests by the public housing agency pursuant to an authorization provided under this clause.

"(iii) A request by the public housing agency pursuant to an authorization provided under this clause is deemed to meet the requirements of section 1104(a)(3) of the Right to Financial Privacy Act and the flush language of section 1102 of such Act.

Notification.

"(iv) The public housing agency shall inform any person who provides authorization pursuant to this paragraph of the duration and scope of the authorization.

"(D) If an applicant for, or recipient of, benefits under this Act (or any such other person referred to in subparagraph (A)) refuses to provide, or revokes, any authorization made by the applicant or recipient for the public housing agency to obtain from any financial institution any financial record, the public housing agency may, on that basis, determine that the applicant or recipient is ineligible for benefits under this title.".

**SEC. 105. UNITS OWNED BY PUBLIC HOUSING AGENCIES.**

Paragraph (11) of section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(11)) is amended—

(1) by striking "(11) LEASING OF UNITS OWNED BY PHA.—If" and inserting the following:

"(11) LEASING OF UNITS OWNED BY PHA.—

"(A) INSPECTIONS AND RENT DETERMINATIONS.—If"; and

(2) by adding at the end the following new subparagraph:

Definition.

"(B) UNITS OWNED BY PHA.—For purposes of this subsection, the term 'owned by a public housing agency' means, with respect to a dwelling unit, that the dwelling unit is in a project that is owned by such agency, by an entity wholly controlled by such agency, or by a limited liability company or limited partnership in which such agency (or an entity wholly controlled by such agency) holds a controlling interest in the managing member or general partner. A dwelling unit shall not be deemed to be owned by a public housing agency for purposes of this subsection because the agency holds a fee interest as ground lessor in the property on which the unit is situated, holds a security interest under a mortgage or deed of trust on the unit, or holds a non-controlling interest in an entity which owns the unit or in the managing member or general partner of an entity which owns the unit.".

**SEC. 106. PHA PROJECT-BASED ASSISTANCE.**

(a) IN GENERAL.—Paragraph (13) of section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)) is amended—

(1) by striking "structure" each place such term appears and inserting "project";

(2) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) PERCENTAGE LIMITATION.—

"(i) IN GENERAL.—Subject to clause (ii), a public housing agency may use for project-based assistance under this paragraph not more than 20 percent of the authorized units for the agency.

"(ii) EXCEPTION.—A public housing agency may use up to an additional 10 percent of the authorized units for the agency for project-based assistance under this paragraph, to provide units that house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), that house families with veterans, that provide supportive housing to persons with disabilities or elderly persons, or that are located in areas where vouchers under this subsection are difficult to use, as specified in subparagraph (D)(ii)(II). Any units of project-based assistance that are attached to units previously subject to federally required rent restrictions or receiving another type of long-term housing subsidy provided by the Secretary shall not count toward the percentage limitation under clause (i) of this subparagraph. The Secretary may, by regulation, establish additional categories for the exception under this clause.";

Regulations.

(3) by striking subparagraph (D) and inserting the following new subparagraph:

"(D) INCOME-MIXING REQUIREMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii), not more than the greater of 25 dwelling units or 25 percent of the dwelling units in any project may be assisted under a housing assistance payment contract for project-based assistance pursuant to this paragraph. For purposes of this subparagraph, the term 'project' means a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

Definition.

"(ii) EXCEPTIONS.—

"(I) CERTAIN FAMILIES.—The limitation under clause (i) shall not apply to dwelling units assisted under a contract that are exclusively made available to elderly families or to households eligible for supportive services that are made available to the assisted residents of the project, according to standards for such services the Secretary may establish.

"(II) CERTAIN AREAS.—With respect to areas in which tenant-based vouchers for assistance under this subsection are difficult to use, as determined by the Secretary, and with respect to census tracts with a poverty rate of 20 percent or less, clause (i) shall be applied by substituting '40 percent' for '25 percent', and the Secretary may, by regulation, establish additional conditions.

Determination.
Applicability.
Regulations.

"(III) CERTAIN CONTRACTS.—The limitation under clause (i) shall not apply with respect to contracts or renewal of contracts under which a greater percentage of the dwelling units in a project were assisted under a housing assistance payment contract for project-based assistance pursuant to this paragraph on the date of the enactment of the Housing Opportunity Through Modernization Act of 2016.

"(IV) CERTAIN PROPERTIES.—Any units of project-based assistance under this paragraph that are attached to units previously subject to federally required rent restrictions or receiving other project-based assistance provided by the Secretary shall not count toward the percentage limitation imposed by this subparagraph (D).

"(iii) ADDITIONAL MONITORING AND OVERSIGHT REQUIREMENTS.—The Secretary may establish additional requirements for monitoring and oversight of projects in which more than 40 percent of the dwelling units are assisted under a housing assistance payment contract for project-based assistance pursuant to this paragraph.";

(4) by striking subparagraph (F) and inserting the following new subparagraph:

"(F) CONTRACT TERM.—

"(i) TERM.—A housing assistance payment contract pursuant to this paragraph between a public housing agency and the owner of a project may have a term of up to 20 years, subject to—

"(I) the availability of sufficient appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriation Acts and in the agency's annual contributions contract with the Secretary, provided that in the event of insufficient appropriated funds, payments due under contracts under this paragraph shall take priority if other cost-saving measures that do not require the termination of an existing contract are available to the agency; and

"(II) compliance with the inspection requirements under paragraph (8), except that the agency shall not be required to make biennial inspections of each assisted unit in the development.

"(ii) ADDITION OF ELIGIBLE UNITS.—Subject to the limitations of subparagraphs (B) and (D), the agency and the owner may add eligible units within the same project to a housing assistance payments contract at any time during the term thereof without being subject to any additional competitive selection procedures.

"(iii) HOUSING UNDER CONSTRUCTION OR RECENTLY CONSTRUCTED.—An agency may enter into a housing assistance payments contract with an owner for any unit that does not qualify as existing housing and is under construction or recently has been constructed whether or not the agency has executed an agreement to enter into a contract with the owner, provided that the owner demonstrates compliance with applicable requirements prior to execution of the housing assistance payments contract. This clause shall not subject a housing assistance payments contract for existing housing under this paragraph to such requirements or otherwise limit the extent to which a unit may be assisted as existing housing.

"(iv) ADDITIONAL CONDITIONS.—The contract may specify additional conditions, including with respect

to continuation, termination, or expiration, and shall specify that upon termination or expiration of the contract without extension, each assisted family may elect to use its assistance under this subsection to remain in the same project if its unit complies with the inspection requirements under paragraph (8), the rent for the unit is reasonable as required by paragraph (10)(A), and the family pays its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-based utilities) exceeds the applicable payment standard.";

(5) in subparagraph (G), by striking "15 years" and inserting "20 years";

(6) by striking subparagraph (I) and inserting the following new subparagraph:

"(I) RENT ADJUSTMENTS.—A housing assistance payments contract pursuant to this paragraph entered into after the date of the enactment of the Housing Opportunity Through Modernization Act of 2016 shall provide for annual rent adjustments upon the request of the owner, except that— Contracts.

"(i) by agreement of the parties, a contract may allow a public housing agency to adjust the rent for covered units using an operating cost adjustment factor established by the Secretary pursuant to section 524(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (which shall not result in a negative adjustment), in which case the contract may require an additional adjustment, if requested, up to the reasonable rent periodically during the term of the contract, and shall require such an adjustment, if requested, upon extension pursuant to subparagraph (G);

"(ii) the adjusted rent shall not exceed the maximum rent permitted under subparagraph (H);

"(iii) the contract may provide that the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract covering the units; and

"(iv) the provisions of subsection (c)(2)(C) shall not apply.";

(7) in subparagraph (J)—

(A) in the first sentence—

(i) by striking "shall" and inserting "may"; and

(ii) by inserting before the period the following: "or may permit owners to select applicants from site-based waiting lists as specified in this subparagraph";

(B) by striking the third sentence and inserting the following: "The agency or owner may establish preferences or criteria for selection for a unit assisted under this paragraph that are consistent with the public housing agency plan for the agency approved under section 5A and that give preference to families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units."; and

Procedures.

(C) by striking the fifth and sixth sentences and inserting the following: "A public housing agency may establish and utilize procedures for owner-maintained site-based waiting lists, under which applicants may apply at, or otherwise designate to the public housing agency, the project or projects in which they seek to reside, except that all eligible applicants on the waiting list of an agency for assistance under this subsection shall be permitted to place their names on such separate list, subject to policies and procedures established by the Secretary. All such procedures shall comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and other applicable civil rights laws. The owner or manager of a project assisted under this paragraph shall not admit any family to a dwelling unit assisted under a contract pursuant to this paragraph other than a family referred by the public housing agency from its waiting list, or a family on a site-based waiting list that complies with the requirements of this subparagraph. A public housing agency shall disclose to each applicant all other options in the selection of a project in which to reside that are provided by the public housing agency and are available to the applicant.";

Disclosure.

(8) in subparagraph (M)(ii), by inserting before the period at the end the following: "relating to funding other than housing assistance payments"; and

(9) by adding at the end the following new subparagraphs:

Notification. Public information.

"(N) STRUCTURE OWNED BY AGENCY.—A public housing agency engaged in an initiative to improve, develop, or replace a public housing property or site may attach assistance to an existing, newly constructed, or rehabilitated structure in which the agency has an ownership interest or which the agency has control of without following a competitive process, provided that the agency has notified the public of its intent through its public housing agency plan and subject to the limitations and requirements of this paragraph.

"(O) SPECIAL PURPOSE VOUCHERS.—A public housing agency that administers vouchers authorized under subsection (o)(19) or (x) of this section may provide such assistance in accordance with the limitations and requirements of this paragraph, without additional requirements for approval by the Secretary.".

Notice. Regulations. 42 USC 1437f note.

(b) EFFECTIVE DATE.—The Secretary of Housing and Urban Development shall issue notice or regulations to implement subsection (a) of this section and such subsection shall take effect upon such issuance.

**SEC. 107. ESTABLISHMENT OF FAIR MARKET RENT.**

(a) IN GENERAL.—Paragraph (1) of section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(1)) is amended—

(1) by inserting "(A)" after the paragraph designation;

(2) by striking the fourth, seventh, eighth, and ninth sentences; and

(3) by adding at the end the following:

Web posting.

"(B) Fair market rentals for an area shall be published not less than annually by the Secretary on the site of the Department

on the World Wide Web and in any other manner specified by the Secretary. Notice that such fair market rentals are being published shall be published in the Federal Register, and such fair market rentals shall become effective no earlier than 30 days after the date of such publication. The Secretary shall establish a procedure for public housing agencies and other interested parties to comment on such fair market rentals and to request, within a time specified by the Secretary, reevaluation of the fair market rentals in a jurisdiction before such rentals become effective. The Secretary shall cause to be published for comment in the Federal Register notices of proposed material changes in the methodology for estimating fair market rentals and notices specifying the final decisions regarding such proposed substantial methodological changes and responses to public comments.".

Notice.
Federal Register, publication.
Effective date.
Time period.

(b) PAYMENT STANDARD.—Subparagraph (B) of section 8(o)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(1)(B)) is amended by inserting before the period at the end the following: ", except that no public housing agency shall be required as a result of a reduction in the fair market rental to reduce the payment standard applied to a family continuing to reside in a unit for which the family was receiving assistance under this section at the time the fair market rental was reduced. The Secretary shall allow public housing agencies to request exception payment standards within fair market rental areas subject to criteria and procedures established by the Secretary".

Criteria.
Procedures.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act.

42 USC 1437f note.

**SEC. 108. COLLECTION OF UTILITY DATA.**

Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) is amended by adding at the end the following new paragraph:

"(20) COLLECTION OF UTILITY DATA.—

"(A) PUBLICATION.—The Secretary shall, to the extent that data can be collected cost effectively, regularly publish such data regarding utility consumption and costs in local areas as the Secretary determines will be useful for the establishment of allowances for tenant-paid utilities for families assisted under this subsection.

Determination.

"(B) USE OF DATA.—The Secretary shall provide such data in a manner that—

"(i) avoids unnecessary administrative burdens for public housing agencies and owners; and

"(ii) protects families in various unit sizes and building types, and using various utilities, from high rent and utility cost burdens relative to income.".

**SEC. 109. PUBLIC HOUSING CAPITAL AND OPERATING FUNDS.**

(a) CAPITAL FUND REPLACEMENT RESERVES.—Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended—

(1) in subsection (j), by adding at the end the following new paragraph:

"(7) TREATMENT OF REPLACEMENT RESERVE.—The requirements of this subsection shall not apply to funds held in replacement reserves established pursuant to subsection (n)."; and

(2) by adding at the end the following new subsection:

"(n) ESTABLISHMENT OF REPLACEMENT RESERVES.—

"(1) IN GENERAL.—Public housing agencies shall be permitted to establish a replacement reserve to fund any of the capital activities listed in subsection (d)(1).

"(2) SOURCE AND AMOUNT OF FUNDS FOR REPLACEMENT RESERVE.—At any time, a public housing agency may deposit funds from such agency's Capital Fund into a replacement reserve, subject to the following:

"(A) At the discretion of the Secretary, public housing agencies may transfer and hold in a replacement reserve funds originating from additional sources.

"(B) No minimum transfer of funds to a replacement reserve shall be required.

Determination.

"(C) At any time, a public housing agency may not hold in a replacement reserve more than the amount the public housing authority has determined necessary to satisfy the anticipated capital needs of properties in its portfolio assisted under this section, as outlined in its Capital Fund 5-Year Action Plan, or a comparable plan, as determined by the Secretary.

Regulations.

"(D) The Secretary may establish, by regulation, a maximum replacement reserve level or levels that are below amounts determined under subparagraph (C), which may be based upon the size of the portfolio assisted under this section or other factors.

"(3) TRANSFER OF OPERATING FUNDS.—In first establishing a replacement reserve, the Secretary may allow public housing agencies to transfer more than 20 percent of its operating funds into its replacement reserve.

"(4) EXPENDITURE.—Funds in a replacement reserve may be used for purposes authorized by subsection (d)(1) and contained in its Capital Fund 5-Year Action Plan.

"(5) MANAGEMENT AND REPORT.—The Secretary shall establish appropriate accounting and reporting requirements to ensure that public housing agencies are spending funds on eligible projects and that funds in the replacement reserve are connected to capital needs.".

(b) FLEXIBILITY OF OPERATING FUND AMOUNTS.—Paragraph (1) of section 9(g) of the United States Housing Act of 1937 (42 U.S.C. 1437g(g)(1)) is amended—

(1) by striking "(1)" and all that follows through "—Of" and inserting the following:

"(1) FLEXIBILITY IN USE OF FUNDS.—

"(A) FLEXIBILITY FOR CAPITAL FUND AMOUNTS.—Of"; and

(2) by adding at the end the following new subparagraph:

"(B) FLEXIBILITY FOR OPERATING FUND AMOUNTS.—Of any amounts appropriated for fiscal year 2016 or any fiscal year thereafter that are allocated for fiscal year 2016 or any fiscal year thereafter from the Operating Fund for any public housing agency, the agency may use not more than 20 percent for activities that are eligible under subsection (d) for assistance with amounts from the Capital Fund, but only if the public housing plan under section 5A for the agency provides for such use.".

**SEC. 110. FAMILY UNIFICATION PROGRAM FOR CHILDREN AGING OUT OF FOSTER CARE.**

Section 8(x) of the United States Housing Act of 1937 (42 U.S.C. 1437f(x)) is amended—

(1) in paragraph (2)(B)—

(A) by striking "18 months" and inserting "36 months";

(B) by striking "21 years of age" and inserting "24 years of age"; and

(C) by inserting after "have left foster care" the following: ", or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act, and is homeless or is at risk of becoming homeless";

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) COORDINATION BETWEEN PUBLIC HOUSING AGENCIES AND PUBLIC CHILD WELFARE AGENCIES.—The Secretary shall, not later than the expiration of the 180-day period beginning on the date of the enactment of the Housing Opportunity Through Modernization Act of 2016 and after consultation with other appropriate Federal agencies, issue guidance to improve coordination between public housing agencies and public child welfare agencies in carrying out the program under this subsection, which shall provide guidance on— Deadline. Time period. Effective date. Consultation. Guidance.

"(A) identifying eligible recipients for assistance under this subsection;

"(B) coordinating with other local youth and family providers in the community and participating in the Continuum of Care program established under subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381 et seq.);

"(C) implementing housing strategies to assist eligible families and youth;

"(D) aligning system goals to improve outcomes for families and youth and reducing lapses in housing for families and youth; and

"(E) identifying resources that are available to eligible families and youth to provide supportive services available through parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq.; 670 et seq.) or that the head of household of a family or youth may be entitled to receive under section 477 of the Social Security Act (42 U.S.C. 677).".

**SEC. 111. PUBLIC HOUSING HEATING GUIDELINES.**

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsection:

"(o) PUBLIC HOUSING HEATING GUIDELINES.—The Secretary shall publish model guidelines for minimum heating requirements for public housing dwelling units operated by public housing agencies receiving assistance under this section.". Publication.

**SEC. 112. USE OF VOUCHERS FOR MANUFACTURED HOUSING.**

(a) IN GENERAL.—Section 8(o)(12) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(12)) is amended—

(1) in subparagraph (A), by striking the period at the end of the first sentence and all that follows through "of" in the second sentence and inserting "and rents"; and

(2) in subparagraph (B)—

(A) in clause (i), by striking "the rent" and all that follows and inserting the following: "rent shall mean the sum of the monthly payments made by a family assisted under this paragraph to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes, the monthly amount allowed for tenant-paid utilities, and the monthly rent charged for the real property on which the manufactured home is located, including monthly management and maintenance charges.";

(B) by striking clause (ii); and

(C) in clause (iii)—

(i) by inserting after the period at the end the following: "If the amount of the monthly assistance payment for a family exceeds the monthly rent charged for the real property on which the manufactured home is located, including monthly management and maintenance charges, a public housing agency may pay the remainder to the family, lender or utility company, or may choose to make a single payment to the family for the entire monthly assistance amount."; and

(ii) by redesignating such clause as clause (ii).

Notice.
42 USC 1437f note.

(b) EFFECTIVE DATE.—The Secretary of Housing and Urban Development shall issue notice to implement the amendments made by subsection (a) and such amendments shall take effect upon such issuance.

**SEC. 113. PREFERENCE FOR UNITED STATES CITIZENS OR NATIONALS.**

Section 214(a)(7) of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(a)(7)) is amended by striking "such alien" and all that follows through the period at the end and inserting "any citizen or national of the United States shall be entitled to a preference or priority in receiving financial assistance before any such alien who is otherwise eligible for assistance.".

**SEC. 114. EXCEPTION TO PUBLIC HOUSING AGENCY RESIDENT BOARD MEMBER REQUIREMENT.**

Subsection (b) of section 2 of the United States Housing Act of 1937 (42 U.S.C. 1437(b)) is amended—

(1) in paragraph (1), by striking "paragraph (2)" and inserting "paragraphs (2) and (3)";

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) EXCEPTION FOR CERTAIN JURISDICTIONS.—

"(A) EXCEPTION.—A covered agency (as such term is defined in subparagraph (C) of this paragraph) shall not be required to include on the board of directors or a similar governing board of such agency a member described in paragraph (1).

Establishment.

"(B) ADVISORY BOARD REQUIREMENT.—Each covered agency that administers Federal housing assistance under section 8 (42 U.S.C. 1437f) that chooses not to include

a member described in paragraph (1) on the board of directors or a similar governing board of the agency shall establish an advisory board of not less than 6 residents of public housing or recipients of assistance under section 8 (42 U.S.C. 1437f) to provide advice and comment to the agency or other administering entity on issues related to public housing and section 8. Such advisory board shall meet not less than quarterly.

"(C) COVERED AGENCY OR ENTITY.—For purposes of this paragraph, the term 'covered agency' means a public housing agency or such other entity that administers Federal housing assistance for— Definition.

"(I) the Housing Authority of the county of Los Angeles, California; or

"(ii) any of the States of Alaska, Iowa, and Mississippi.".

# TITLE II—RURAL HOUSING

**SEC. 201. DELEGATION OF GUARANTEED RURAL HOUSING LOAN APPROVAL.**

Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended by adding at the end the following new paragraph:

"(18) DELEGATION OF APPROVAL.—The Secretary may delegate, in part or in full, the Secretary's authority to approve and execute binding Rural Housing Service loan guarantees pursuant to this subsection to certain preferred lenders, in accordance with standards established by the Secretary.". Standards.

**SEC. 202. GUARANTEED UNDERWRITING USER FEE.**

Section 502 of the Housing Act of 1949 (42 U.S.C. 1472) is amended by adding at the end the following new subsection:

"(i) GUARANTEED UNDERWRITING USER FEE.—

"(1) AUTHORITY; MAXIMUM AMOUNT.—The Secretary may assess and collect a fee for a lender to access the automated underwriting systems of the Department in connection with such lender's participation in the single family loan program under this section and only in an amount necessary to cover the costs of information technology enhancements, improvements, maintenance, and development for automated underwriting systems used in connection with the single family loan program under this section, except that such fee shall not exceed $50 per loan.

"(2) CREDITING; AVAILABILITY.—Any amounts collected from such fees shall be credited to the Rural Development Expense Account as offsetting collections and shall remain available until expended, in the amounts provided in appropriation Acts, solely for expenses described in paragraph (1).".

# TITLE III—FHA MORTGAGE INSURANCE FOR CONDOMINIUMS

### SEC. 301. MODIFICATION OF FHA REQUIREMENTS FOR MORTGAGE INSURANCE FOR CONDOMINIUMS.

Section 203 of the National Housing Act (12 U.S.C. 1709) is amended by adding at the end the following new subsection:

"(y) REQUIREMENTS FOR MORTGAGES FOR CONDOMINIUMS.—

"(1) PROJECT RECERTIFICATION REQUIREMENTS.—Notwithstanding any other law, regulation, or guideline of the Secretary, including chapter 2.4 of the Condominium Project Approval and Processing Guide of the FHA, the Secretary shall streamline the project certification requirements that are applicable to the insurance under this section for mortgages for condominium projects so that recertifications are substantially less burdensome than certifications. The Secretary shall consider lengthening the time between certifications for approved properties, and allowing updating of information rather than resubmission.

Determination.

"(2) COMMERCIAL SPACE REQUIREMENTS.—Notwithstanding any other law, regulation, or guideline of the Secretary, including chapter 2.1.3 of the Condominium Project Approval and Processing Guide of the FHA, in providing for exceptions to the requirement for the insurance of a mortgage on a condominium property under this section regarding the percentage of the floor space of a condominium property that may be used for nonresidential or commercial purposes, the Secretary shall provide that—

"(A) any request for such an exception and the determination of the disposition of such request may be made, at the option of the requester, under the direct endorsement lender review and approval process or under the HUD review and approval process through the applicable field office of the Department; and

"(B) in determining whether to allow such an exception for a condominium property, factors relating to the economy for the locality in which such project is located or specific to project, including the total number of family units in the project, shall be considered.

Deadline.
Time period.
Effective date.
Regulations.
Standards.
Penalties.
Applicability.

Not later than the expiration of the 90-day period beginning on the date of the enactment of this paragraph, the Secretary shall issue regulations to implement this paragraph, which shall include any standards, training requirements, and remedies and penalties that the Secretary considers appropriate.

"(3) TRANSFER FEES.—Notwithstanding any other law, regulation, or guideline of the Secretary, including chapter 1.8.8 of the Condominium Project Approval and Processing Guide of the FHA and section 203.41 of the Secretary's regulations (24 CFR 203.41), existing standards of the Federal Housing Finance Agency relating to encumbrances under private transfer fee covenants shall apply to the insurance of mortgages by the Secretary under this section to the same extent and in the same manner that such standards apply to the purchasing, investing in, and otherwise dealing in mortgages by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. If the provisions of part

Federal Register, publication.
Notice.
Deadline.

1228 of the Director of the Federal Housing Finance Agency's regulations (12 CFR part 1228) are amended or otherwise changed after the date of the enactment of this paragraph, the Secretary of Housing and Urban Development shall adopt any such amendments or changes for purposes of this paragraph, unless the Secretary causes to be published in the Federal Register a notice explaining why the Secretary will disregard such amendments or changes within 90 days after the effective date of such amendments or changes.

"(4) OWNER-OCCUPANCY REQUIREMENT.—

"(A) ESTABLISHMENT OF PERCENTAGE REQUIREMENT.—Not later than the expiration of the 90-day period beginning on the date of the enactment of this paragraph, the Secretary shall, by rule, notice, or mortgagee letter, issue guidance regarding the percentage of units that must be occupied by the owners as a principal residence or a secondary residence (as such terms are defined by the Secretary), or must have been sold to owners who intend to meet such occupancy requirements, including justifications for the percentage requirements, in order for a condominium project to be acceptable to the Secretary for insurance under this section of a mortgage within such condominium property.

Deadline.
Time period.
Effective date.
Regulations.
Notice.
Guidance.

"(B) FAILURE TO ACT.—If the Secretary fails to issue the guidance required under subparagraph (A) before the expiration of the 90-day period specified in such clause, the following provisions shall apply:

Applicability.

"(i) 35 PERCENT REQUIREMENT.—In order for a condominium project to be acceptable to the Secretary for insurance under this section, at least 35 percent of all family units (including units not covered by FHA-insured mortgages) must be occupied by the owners as a principal residence or a secondary residence (as such terms are defined by the Secretary), or must have been sold to owners who intend to meet such occupancy requirement.

"(ii) OTHER CONSIDERATIONS.—The Secretary may increase the percentage applicable pursuant to clause (i) to a condominium project on a project-by-project or regional basis, and in determining such percentage for a project shall consider factors relating to the economy for the locality in which such project is located or specific to project, including the total number of family units in the project.".

# TITLE IV—HOUSING REFORMS FOR THE HOMELESS AND FOR VETERANS

### SEC. 401. DEFINITION OF GEOGRAPHIC AREA FOR CONTINUUM OF CARE PROGRAM.

(a) DEFINITION.—Subtitle C of the McKinney-Vento Homeless Assistance Act is amended—

(1) by redesignating sections 432 and 433 (42 U.S.C. 11387, 11388) as sections 433 and 434, respectively; and

(2) by inserting after section 431 (42 U.S.C. 11386e) the following new section:

42 USC 11386f.

**"SEC. 432. GEOGRAPHIC AREAS.**

Notice.

"(a) REQUIREMENT TO DEFINE.—For purposes of this subtitle, the term 'geographic area' shall have such meaning as the Secretary shall by notice provide.

Deadline. Time period. Effective date.

"(b) ISSUANCE OF NOTICE.—Not later than the expiration of the 90-day period beginning on the date of the enactment of the Housing Opportunity Through Modernization Act of 2016, the Secretary shall issue a notice setting forth the definition required by subsection (a).".

(b) CLERICAL AMENDMENT.—The table of contents in section 101(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 note) is amended by striking the items relating to sections 432 and 433 and inserting the following new items:

"Sec. 432. Geographic areas.
"Sec. 433. Regulations.
"Sec. 434. Reports to Congress.".

**SEC. 402. INCLUSION OF PUBLIC HOUSING AGENCIES AND LOCAL REDEVELOPMENT AUTHORITIES IN EMERGENCY SOLUTIONS GRANTS.**

Section 414(c) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11373(c)) is amended—

(1) in the subsection heading, by inserting ", PUBLIC HOUSING AGENCIES, AND LOCAL REDEVELOPMENT AUTHORITIES" after "ORGANIZATIONS"; and

(2) in the first sentence, by inserting before the period at the end the following: ", to public housing agencies (as defined under section 3(b)(6) of the United States Housing Act of 1937), or to local redevelopment authorities (as defined under State law)".

**SEC. 403. SPECIAL ASSISTANT FOR VETERANS AFFAIRS IN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**

(a) TRANSFER OF POSITION TO OFFICE OF THE SECRETARY.—Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

"(h) SPECIAL ASSISTANT FOR VETERANS AFFAIRS.—

"(1) POSITION.—There shall be in the Office of the Secretary a Special Assistant for Veterans Affairs, who shall report directly to the Secretary.

"(2) APPOINTMENT.—The Special Assistant for Veterans Affairs shall be appointed based solely on merit and shall be covered under the provisions of title 5, United States Code, governing appointments in the competitive service.

"(3) RESPONSIBILITIES.—The Special Assistant for Veterans Affairs shall be responsible for—

"(A) ensuring veterans have fair access to housing and homeless assistance under each program of the Department providing either such assistance;

"(B) coordinating all programs and activities of the Department relating to veterans;

"(C) serving as a liaison for the Department with the Department of Veterans Affairs, including establishing and maintaining relationships with the Secretary of Veterans Affairs;

"(D) serving as a liaison for the Department, and establishing and maintaining relationships with the United States Interagency Council on Homelessness and officials of State, local, regional, and nongovernmental organizations concerned with veterans;

"(E) providing information and advice regarding—

"(i) sponsoring housing projects for veterans assisted under programs administered by the Department; or

"(ii) assisting veterans in obtaining housing or homeless assistance under programs administered by the Department;

"(F) coordinating with the Secretary of Housing and Urban Development and the Secretary of Veterans Affairs in carrying out section 404 of the Housing Opportunity Through Modernization Act of 2016;

"(G) collaborating with the Department of Veterans Affairs on making joint recommendations to the Congress, the Secretary of Housing and Urban Development, and the Secretary of Veterans Affairs on how to better coordinate and improve services to veterans under both Department of Housing and Urban Development and Department of Veteran Affairs veterans housing programs, including ways to improve the Independent Living Program of the Department of Veteran Affairs; and

"(H) carrying out such other duties as may be assigned to the Special Assistant by the Secretary or by law.".

(b) TRANSFER OF POSITION IN OFFICE OF DEPUTY ASSISTANT SECRETARY FOR SPECIAL NEEDS.—On the date that the initial Special Assistant for Veterans Affairs is appointed pursuant to section 4(h)(2) of the Department of Housing and Urban Development Act, as added by subsection (a) of this section, the position of Special Assistant for Veterans Programs in the Office of the Deputy Assistant Secretary for Special Needs of the Department of Housing and Urban Development shall be terminated.

42 USC 3533 note. Termination.

**SEC. 404. ANNUAL SUPPLEMENTAL REPORT ON VETERANS HOMELESSNESS.**

42 USC 11313 note.

(a) IN GENERAL.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs, in coordination with the United States Interagency Council on Homelessness, shall submit annually to the Committees of the Congress specified in subsection (b), together with the annual reports required by such Secretaries under section 203(c)(1) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11313(c)(1)), a supplemental report that includes the following information with respect to the preceding year:

Coordination.

(1) The same information, for such preceding year, that was included with respect to 2010 in the report by the Secretary of Housing and Urban Development and the Secretary of Veterans Affairs entitled "Veterans Homelessness: A Supplemental Report to the 2010 Annual Homeless Assessment Report to Congress".

(2) Information regarding the activities of the Department of Housing and Urban Development relating to veterans during such preceding year, as follows:

(A) The number of veterans provided assistance under the housing choice voucher program for Veterans Affairs supported housing under section 8(o)(19) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(19)), the socioeconomic characteristics of such homeless veterans, and the number, types, and locations of entities contracted under such section to administer the vouchers.

Summary.

(B) A summary description of the special considerations made for veterans under public housing agency plans submitted pursuant to section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) and under comprehensive housing affordability strategies submitted pursuant to section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705).

(C) A description of the activities of the Special Assistant for Veterans Affairs of the Department of Housing and Urban Development.

(D) A description of the efforts of the Department of Housing and Urban Development and the other members of the United States Interagency Council on Homelessness to coordinate the delivery of housing and services to veterans.

(E) The cost to the Department of Housing and Urban Development of administering the programs and activities relating to veterans.

(F) Any other information that the Secretary of Housing and Urban Development and the Secretary of Veterans Affairs consider relevant in assessing the programs and activities of the Department of Housing and Urban Development relating to veterans.

(b) COMMITTEES.—The Committees of the Congress specified in this subsection are as follows:

(1) The Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Committee on Veterans' Affairs of the Senate.

(3) The Committee on Appropriations of the Senate.

(4) The Committee on Financial Services of the House of Representatives.

(5) The Committee on Veterans' Affairs of the House of Representatives.

(6) The Committee on Appropriations of the House of Representatives.

**SEC. 405. REOPENING OF PUBLIC COMMENT PERIOD FOR CONTINUUM OF CARE PROGRAM REGULATIONS.**

Deadline.
Time period.
Effective date.

Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall re-open the period for public comment regarding the Secretary's interim rule entitled "Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program", published in the Federal Register on July 31, 2012 (77 Fed. Reg. 45422; Docket No. FR–5476–I–01). Upon reopening, such comment period shall remain open for a period of not fewer than 60 days.

# TITLE V—MISCELLANEOUS

**SEC. 501. INCLUSION OF DISASTER HOUSING ASSISTANCE PROGRAM IN CERTAIN FRAUD AND ABUSE PREVENTION MEASURES.**

42 USC 3544 note.

The Disaster Housing Assistance Program administered by the Department of Housing and Urban Development shall be considered a "program of the Department of Housing and Urban Development" under section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544) for the purpose of income verifications.

**SEC. 502. ENERGY EFFICIENCY REQUIREMENTS UNDER SELF-HELP HOMEOWNERSHIP OPPORTUNITY PROGRAM.**

Section 11 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) is amended by inserting after subsection (f) the following new subsection:

"(g) ENERGY EFFICIENCY REQUIREMENTS.—The Secretary may not require any dwelling developed using amounts from a grant made under this section to meet any energy efficiency standards other than the standards applicable at such time pursuant to section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709) to housing specified in subsection (a) of such section.".

**SEC. 503. DATA EXCHANGE STANDARDIZATION FOR IMPROVED INTEROPERABILITY.**

(a) DATA EXCHANGE STANDARDIZATION.—Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

**"SEC. 37. DATA EXCHANGE STANDARDS FOR IMPROVED INTEROPERABILITY.**

42 USC 1437z–9.

"(a) DESIGNATION.—The Secretary shall, in consultation with an interagency work group established by the Office of Management and Budget, and considering State government perspectives, designate data exchange standards to govern, under this Act—

Consultation.

"(1) necessary categories of information that State agencies operating related programs are required under applicable law to electronically exchange with another State agency; and

"(2) Federal reporting and data exchange required under applicable law.

"(b) REQUIREMENTS.—The data exchange standards required by subsection (a) shall, to the maximum extent practicable—

"(1) incorporate a widely accepted, nonproprietary, searchable, computer-readable format, such as the eXtensible Markup Language;

"(2) contain interoperable standards developed and maintained by intergovernmental partnerships, such as the National Information Exchange Model;

"(3) incorporate interoperable standards developed and maintained by Federal entities with authority over contracting and financial assistance;

"(4) be consistent with and implement applicable accounting principles;

"(5) be implemented in a manner that is cost- effective and improves program efficiency and effectiveness; and

"(6) be capable of being continually upgraded as necessary.

"(c) RULES OF CONSTRUCTION.—Nothing in this section requires a change to existing data exchange standards for Federal reporting found to be effective and efficient.".

42 USC 1437z–9 note. Deadline. Regulations.

(b) APPLICABILITY.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall issue a proposed rule to carry out the amendments made by subsection (a).

(2) REQUIREMENTS.—The rule shall—

(A) identify federally required data exchanges;

(B) include specification and timing of exchanges to be standardized;

(C) address the factors used in determining whether and when to standardize data exchanges;

(D) specify State implementation options; and

(E) describe future milestones.

# TITLE VI—REPORTS

42 USC 3536a note.

**SEC. 601. REPORT ON INTERAGENCY FAMILY ECONOMIC EMPOWERMENT STRATEGIES.**

Consultation.

The Secretary of Housing and Urban Development, in consultation with the Secretary of Labor, shall submit a report to the Congress annually that describes—

(1) any interagency strategies of such Departments that are designed to improve family economic empowerment by linking housing assistance with essential supportive services, such as employment counseling and training, financial education and growth, childcare, transportation, meals, youth recreational activities, and other supportive services; and

(2) any actions taken in the preceding year to carry out such strategies and the extent of progress achieved by such actions.

# TITLE VII—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

**SEC. 701. FORMULA AND TERMS FOR ALLOCATIONS TO PREVENT HOMELESSNESS FOR INDIVIDUALS LIVING WITH HIV OR AIDS.**

(a) IN GENERAL.—Subsection (c) of section 854 of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) is amended by—

(1) redesignating paragraph (3) as paragraph (5); and

(2) striking paragraphs (1) and (2) and inserting the following:

"(1) ALLOCATION OF RESOURCES.—

"(A) ALLOCATION FORMULA.—The Secretary shall allocate 90 percent of the amount approved in appropriations Acts under section 863 among States and metropolitan statistical areas as follows:

"(I) 75 percent of such amounts among—

"(I) cities that are the most populous unit of general local government in a metropolitan statistical area with a population greater than 500,000, as determined on the basis of the most recent

census, and with more than 2,000 individuals living with HIV or AIDS, using the data specified in subparagraph (B); and

"(II) States with more than 2,000 individuals living with HIV or AIDS outside of metropolitan statistical areas.

"(ii) 25 percent of such amounts among States and metropolitan statistical areas based on the method described in subparagraph (C).

"(B) SOURCE OF DATA.—For purposes of allocating amounts under this paragraph for any fiscal year, the number of individuals living with HIV or AIDS shall be the number of such individuals as confirmed by the Director of the Centers for Disease Control and Prevention, as of December 31 of the most recent calendar year for which such data is available.

"(C) ALLOCATION UNDER SUBPARAGRAPH (A)(ii).—For purposes of allocating amounts under subparagraph (A)(ii), the Secretary shall develop a method that accounts for—

"(I) differences in housing costs among States and metropolitan statistical areas based on the fair market rental established pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)) or another methodology established by the Secretary through regulation; and

"(ii) differences in poverty rates among States and metropolitan statistical areas based on area poverty indexes or another methodology established by the Secretary through regulation.

"(2) MAINTAINING GRANTS.—

"(A) CONTINUED ELIGIBILITY OF FISCAL YEAR 2016 GRANTEES.—A grantee that received an allocation in fiscal year 2016 shall continue to be eligible for allocations under paragraph (1) in subsequent fiscal years, subject to—

"(I) the amounts available from appropriations Acts under section 863;

"(ii) approval by the Secretary of the most recent comprehensive housing affordability strategy for the grantee approved under section 105; and

"(iii) the requirements of subparagraph (C).

"(B) ADJUSTMENTS.—Allocations to grantees described in subparagraph (A) shall be adjusted annually based on the administrative provisions included in fiscal year 2016 appropriations Acts.

"(C) REDETERMINATION OF CONTINUED ELIGIBILITY.— Time period.
The Secretary shall redetermine the continued eligibility of a grantee that received an allocation in fiscal year 2016 at least once during the 10-year period following fiscal year 2016.

"(D) ADJUSTMENT TO GRANTS.—For each of fiscal years 2017, 2018, 2019, 2020, and 2021, the Secretary shall ensure that a grantee that received an allocation in the prior fiscal year does not receive an allocation that is 5 percent less than or 10 percent greater than the amount allocated to such grantee in the preceding fiscal year.

"(3) ALTERNATIVE GRANTEES.— Contracts.

"(A) REQUIREMENTS.—The Secretary may award funds reserved for a grantee eligible under paragraph (1) to an alternative grantee if—

Contracts.

"(I) the grantee submits to the Secretary a written agreement between the grantee and the alternative grantee that describes how the alternative grantee will take actions consistent with the applicable comprehensive housing affordability strategy approved under section 105 of this Act;

"(ii) the Secretary approves the written agreement described in clause (I) and agrees to award funds to the alternative grantee; and

"(iii) the written agreement does not exceed a term of 10 years.

"(B) RENEWAL.—An agreement approved pursuant to subparagraph (A) may be renewed by the parties with the approval of the Secretary.

"(C) DEFINITION.—In this paragraph, the term 'alternative grantee' means a public housing agency (as defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b))), a unified funding agency (as defined in section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360)), a State, a unit of general local government, or an instrumentality of State or local government.

Determination.

"(4) REALLOCATIONS.—If a State or metropolitan statistical area declines an allocation under paragraph (1)(A), or the Secretary determines, in accordance with criteria specified in regulation, that a State or metropolitan statistical area that is eligible for an allocation under paragraph (1)(A) is unable to properly administer such allocation, the Secretary shall reallocate any funds reserved for such State or metropolitan statistical area as follows:

"(A) For funds reserved for a State—

"(I) to eligible metropolitan statistical areas within the State on a pro rata basis; or

"(ii) if there is no eligible metropolitan statistical areas within a State, to metropolitan cities and urban counties within the State that are eligible for grant under section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306), on a pro rata basis.

"(B) For funds reserved for a metropolitan statistical area, to the State in which the metropolitan statistical area is located.

"(C) If the Secretary is unable to make a reallocation under subparagraph (A) or (B), the Secretary shall make such funds available on a pro rata basis under the formula in paragraph (1)(A).".

(b) AMENDMENT TO DEFINITIONS.—Section 853 of the AIDS Housing Opportunity Act (42 U.S.C. 12902) is amended—

(1) in paragraph (1), by inserting "or 'AIDS'" before "means"; and

(2) by inserting at the end the following new paragraphs:

"(15) The term 'HIV' means infection with the human immunodeficiency virus.

"(16) The term 'individuals living with HIV or AIDS' means, with respect to the counting of cases in a geographic area during a period of time, the sum of—

"(A) the number of living non-AIDS cases of HIV in the area; and

"(B) the number of living cases of AIDS in the area.".

Approved July 29, 2016.

LEGISLATIVE HISTORY—H.R. 3700:

HOUSE REPORTS: No. 114–397 (Comm. on Financial Services).
CONGRESSIONAL RECORD, Vol. 162 (2016):
Feb. 2, considered and passed House.
July 14, considered and passed Senate.

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 8, 42, 50, 91, 92, 93, 247, 290, 882, 888, 891, 903, 908, 943, 945, 960, 972, 982, 983, 985, and 1000**

**[Docket No. FR–6092–F–03]**

**RIN 2577–AD06**

# Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations to implement changes to the Housing Choice Voucher (HCV) tenant-based program and the Project-Based Voucher (PBV) program made by the Housing Opportunity Through Modernization Act of 2016 (HOTMA). HOTMA made several amendments to the HCV and PBV programs, including establishing a statutory definition of public housing agency (PHA)-owned housing, and amending several elements of both programs. In response to public comments, HUD has also included additional regulatory changes in this final rule that are intended to reduce the burden on public housing agencies, by either modifying requirements or simplifying and clarifying existing regulatory language.

**DATES:**

*Effective date:* June 6, 2024, except the following sections, which are delayed indefinitely: instruction 69, § 982.451(c); instruction 98, § 983.154(g) and (h); instruction 100, § 983.157; and instruction 103, § 983.204(e).

For more information, *see* **SUPPLEMENTARY INFORMATION.**

*Compliance dates:* Compliance with this rule is required no later than June 6, 2024, except for the following requirements:

1. *90 days after effective date.* PHAs are not required to comply with changes to the requirements in the following sections until September 4, 2024: 24 CFR 982.301; 24 CFR 982.503; 24 CFR 982.625–641; 24 CFR 983.58(b); 24 CFR 983.252; 24 CFR 983.260; and 24 CFR 985.3.

2. *180 days after effective date.* PHAs are not required to comply with the new requirements in the following section until December 3, 2024: 24 CFR 982.505.

3. *One year after the effective date.* Several sections in this final rule require PHAs to update their Administrative Plans. PHAs are not required to update their Administrative Plans in compliance with these new requirements until June 6, 2025. Additionally, PHAs are not required to comply with the new requirements in the following sections until June 6, 2025: 24 CFR 983.57; 24 CFR 983.155(b); 24 CFR 983.251(e); and 24 CFR 983.262.

**FOR FURTHER INFORMATION CONTACT:** Ryan Jones, Director, Housing Voucher Management and Operations Division, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20011; telephone number 202–708–1112 (this is not a toll-free number); email *HOTMAVoucher@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as from individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

*The HOTMA Statute*

On July 29, 2016, HOTMA was signed into law (Pub. L. 114–201, 130 Stat. 782). HOTMA makes numerous significant changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f).

*The Proposed Rule*

On October 8, 2020, HUD issued a proposed rule [1] to codify the HOTMA provisions that HUD implemented through the HOTMA Implementation Notices [2] in the **Federal Register**. The proposed rule also sought to make changes to regulatory provisions unrelated to HOTMA to eliminate obsolete regulatory provisions and reduce the burden on public housing agencies, by either modifying requirements or simplifying and clarifying existing regulatory language. The proposed rule sought to codify the following HOTMA provisions:

- *Section 101:* In accordance with HOTMA section 101(a)(1), the proposed rule included a provision regarding non-life-threatening deficiencies and an alternative inspections requirement in HOTMA section 101(a)(1) at §§ 982.405, 982.406, and 983.103. The proposed rule also proposed to revise the definition of life-threatening deficiencies at § 982.401. Additionally, the proposed rule sought to include regulations to enforce Housing Quality Standards (HQS) in section 101(a)(3) at §§ 982.404 and 983.208.
- *Section 105:* In accordance with HOTMA section 105, the proposed rule sought to modify and align the definition of ''PHA-owned unit'' with HOTMA's revised definition of the term at §§ 982.4 and 983.3.
- *Section 106:* In alignment with HOTMA sections 106(a)(2) and 106(a)(3), the proposed rule proposed to include regulations on PBV program cap, PBV units not subject to project cap or program cap, and PBV project cap in §§ 983.6, 983.54, and 983.59.
- *Section 106:* Additionally, to conform to the changes in HOTMA section 106(a)(4), the proposed rule included regulations on entering into a PBV Housing Assistance Payments (HAP) contract for rehabilitated and newly constructed housing projects without an agreement to enter into HAP contract at § 983.154. The proposed rule sought to codify regulations surrounding PBV additional contract conditions and tenant-based assistance for families at termination/expiration without renewal of PBV HAP contract; PBV priority of assistance contracts; PBV adding units to HAP contract without competition; and PBV initial term of HAP contract and extension of term, in sections 106(a)(4) and 106(a)(5) throughout Part 983. The proposed rule sought to codify regulations that allow for rent adjustments using an operating cost adjustment factor (OCAF) in HOTMA section 106(a)(6) at § 983.302.
- *Section 106:* Further, to conform to the changes in HOTMA sections 106(a)(7) through (a)(9), the proposed rule sought to codify HOTMA's changes to PBV preference for voluntary services in section 106(a)(7) at § 983.251 and owner-maintained waiting lists in section 106(a)(7) at § 983.251. The proposed rule also sought to codify changes to environmental requirements for existing housing in section 106(a)(8) at § 983.56 and attaching PBVs to projects where the PHA has an ownership interest in section 106(a)(9) at § 983.51.

The proposed rule also sought to implement the following HOTMA HCV provision:

- *Section 112:* In accordance with HOTMA section 112, the proposed rule proposed to include the manufactured

[1] Housing Opportunity Through Modernization Act of 2016-Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes, 85 FR 63664 (Oct. 8, 2020).

[2] *See* 81 FR 73030 (Oct. 24, 2016); 82 FR 5458 (Jan. 18, 2017); 82 FR 32461 (Jul. 14, 2017); additional guidance was provided in Notices PIH 2017–18, PIH 2017–20, and PIH 2017–21.

home space rent calculation in section 112 at § 982.623, and to address the PHA option to make housing assistance payments directly to families instead of an owner for manufactured home space rentals in a proposed change to § 982.623.

HUD also proposed changes that were not statutorily required, to better clarify or revise existing regulatory requirements, including changing the current requirements to refine the Davis-Bacon wage requirements and inserting references to obligations under Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA). Through these changes, HUD sought to improve the administration of the program, simplify program rules, and reduce administrative burden and cost. For additional information, please see the proposed rule.[3]

HUD received 44 comments on the proposed rule, which were considered and are discussed in Section IV of this preamble. Additional details about the proposed changes may be found in the ''Housing Opportunity Through Modernization Act of 2016-Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes'' proposed rule at 85 FR 63664 (Oct. 8, 2020).

*The NSPIRE Rulemaking*

On May 11, 2023, after the proposed rule was published, HUD published the ''Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE) final rulemaking (''the NSPIRE final rule'').[4] The NSPIRE final rule established a new approach to defining and assessing housing quality by consolidating and modernizing inspection standards for public housing, multifamily housing, Community Planning and Development programs, and the HCV and PBV programs. Several of the changes made in this final rule from the proposed rule are designed to incorporate or be consistent with the NSPIRE final rule, and some additional changes are made to build upon changes made by the NSPIRE final rule.

## II. The Final Rule

After considering the public comments received on the October 8, 2020, proposed rule, and after further review, HUD makes the following changes at this final rule stage. Where a section has been relocated either from the prior regulations or from what HUD proposed, the section numbers shown in the headings of this preamble refer to the regulation sections as they appear in this final rule.

*Notes concerning application of this rulemaking to projects underway.*

HUD wishes to clarify that no change in this rulemaking requires a PHA, or any other party, to repeat a stage in the selection or development process which has already been completed for a PBV project prior to the compliance date of this rulemaking. If, for instance, a PHA has selected a site under the prior site selection standards before the effective date of this rulemaking, the PHA is not required to complete a new selection. Similarly, an Agreement to enter into HAP contract signed before the effective date of this rulemaking does not need to be amended to incorporate changes to this rulemaking.

Additionally, if parties wish to amend an existing Agreement to enter into HAP contract to take advantage of changes made by this rulemaking, such as the changes made to include a description of broadband infrastructure work in the Agreement, nothing in this rulemaking prevents such an amendment after the rule is in effect. However, HUD notes that if a project is under an Agreement to enter into HAP contract as of the effective date of this rule, parties cannot nullify the Agreement to enter into HAP contract to proceed without an Agreement as will be otherwise allowed under this rule when § 983.154(f) and (g) take effect.

*§ 888.113 Fair Market Rents for Existing Housing: Methodology*

In response to public comments, HUD revises § 888.113 to increase flexibility for PHAs. This final rule will provide PHAs the option in the HCV program to use Small Area Fair Market Rents (SAFMRs) in a non-metropolitan area with notification to their local HUD field office, which provides PHAs operating in non-metropolitan counties the same opportunity to establish payment standards that better align with rents that vary significantly between zip code areas within the non-metropolitan counties. In paragraph (a) this final rule modifies the requirement under § 888.113 that the FMR calculation exclude newly built units. HUD no longer publishes separate FMRs for newly constructed rental units; therefore, the FMRs calculated under § 888.113 should be reflective of the entire rental market. This final rule also clarifies existing practice in paragraph (c)(3) that where a PHA that elects to use SAFMRs may exercise this option in one metropolitan area or non-metropolitan county, and is not required to exercise this option in other metropolitan areas or non-metropolitan counties. This final rule changes paragraph (c)(3) which will allow PHAs to notify HUD when opting-in to use SAFMRs, rather than require HUD's approval.

This final rule revises paragraph (h) to align with the change to paragraph (c)(3) described above and to improve readability. Paragraph (h) is also revised to include a cross-reference to separate requirements regarding applicability of exception payment standards based on Small Area FMRs to PBV projects, to more clearly signal that Small Area FMRs may impact PBVs both as described in paragraph (h) and where HUD approves use of exception payment standards. This final rule also revises paragraph (h)(1) to clarify that the PHA and owner may mutually agree to apply the SAFMR to a PBV project where the project was selected before ''either or both'' the SAFMR designation and the PHA administrative policy. The intent of this provision, as explained in the preamble to the Small Area FMR final rule (81 FR 80567, published November 16, 2016), was to permit a PHA that had established an Administrative Plan policy to apply Small Area FMRs to all future PBV projects to also establish a policy permitting the PHA to apply the Small Area FMRs to current PBV projects, provided the owner was willing to mutually agree to do so. This approach was intended to offer ''maximum flexibility'' to the PHA for varied circumstances. However, the prior language the use of ''both'' inadvertently created confusion with respect to projects selected between the two events (the Small Area FMR designation and the PHA administrative policy extending Small Area FMRs to future PBV projects). Consequently, HUD is making a technical correction to paragraph (h)(1) to clarify that if the PHA is applying the Small Area FMRs to future PBV projects, the PHA may also establish a policy to extend the use of Small Area FMRs to current PBV projects, including those projects selected after the Small Area FMR designation but prior to the effective date of the PHA administrative policy, if the owner is willing to do so.

This final rule also makes minor revisions to paragraphs (h)(1) and (h)(2). First, the final rule includes ''county-wide FMRs,'' for consistency with other changes in the regulation that allow voluntary use of SAFMRs in non-

[3] 85 FR 63664 (Oct. 8, 2020), *https://www.federalregister.gov/documents/2020/10/08/2020-21400/housing-opportunity-through-modernization-act-of-2016-housing-choice-voucher-hcv-and-project-based.*

[4] See 88 FR 30442.

metropolitan areas and to avoid any implication that the PBV Small Area FMR flexibilities in paragraph (h) would not be available in non-metropolitan counties where HUD publishes SAFMRs. Second, this final rule changes ''designation'' to ''designation/implementation'' to improve clarity; this is not a substantive change, but rather it reflects that the applicable date for a PHA that chooses to implement Small Area FMRs under paragraph (c)(3) of this section would more appropriately be termed the date of ''implementation.'' This final rule also clarifies the effective date of a rent increase due to Small Area FMR. The proposed rule left unchanged a provision stating that the effective date of a rent increase would occur on the ''first annual anniversary'' of the HAP contract, but this final rule replaces ''first annual anniversary'' with ''next annual anniversary'' to clarify that the effective date of a rent increase occurs on the next annual anniversary after the agreement, even if that is not the first anniversary of the project.

Finally, this final rule revises paragraph (i)(2) to reflect the renumbering of § 982.503(e) to (f). This final rule also revises paragraph (i)(3) to reflect the phase-out of success rate payment standards in 982.503(f).

*§ 903.3 What is the purpose of this subpart?*

This final rule clarifies HUD's intent regarding applicability of part 903 to the project-based voucher program. Previously, § 903.4(a)(2)(i) defined tenant-based assistance to broadly mean assistance provided under section 8(o) of the 1937 Act, which included project-based assistance under section 8(o)(13). When § 903.12 was amended to make express reference to project-based assistance under section 8(o)(13), an unintended consequence was confusion regarding whether the term ''tenant-based assistance'' should still be interpreted to include project-based assistance under section 8(o)(13). In § 903.3(b)(2), the term ''project-based'' is added to the reference of participants who benefit from PHA plans as a source to locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

*§ 903.4 What are the public housing agency plans?*

This final rule revises and defines both tenant-based assistance and project-based assistance under 903.4(a)(2)(i) to address confusion regarding whether the existing regulatory language also covers project-based assistance under section 8(o)(13). HUD now also makes specific reference to tenant-based assistance, project-based assistance, and/or tenant and project-based assistance throughout part 903 to bring clearer meaning to each provision.

*§ 903.6 What information must a PHA provide in the 5-Year Plan?*

HUD adds paragraph (c) to § 903.6 to clarify that when a PHA intends to select one or more projects for project-based assistance without competition, the PHA must first include a statement of this intent in its 5-Year Plan to put the public on notice. The proposed rule referenced this requirement in 983.51(c)(1) but only generically referenced the PHA Plan.

*§ 903.7 What information must a PHA provide in the Annual Plan?*

This final rule clarifies the requirements for PHAs that provide project-based assistance under section 8(o)(13) with respect to what information a PHA must provide in the Annual Plan. HUD now makes specific references to project-based assistance in paragraphs (a)(1), (c), (d), (e)(4), (f), and (l)(1)(iii) and (2). HUD also inserts a new paragraph (r) which contains text that was previously located in § 903.12, as HUD determined that the project-based assistance statement requirement in that section was not appropriately located.

Finally, in the **Federal Register** notice published on January 18, 2017 (82 FR 5458), HUD stated, ''The HOTMA amendments permit a PHA to establish a preference based on who qualifies for voluntary services, including disability-related services, offered in conjunction with the assisted units.'' HUD further provided ''The revised statute permits such a preference to be established if it is consistent with the PHA Plan. As part of the PHA Plan review process, the Office of Fair Housing and Equal Opportunity, in consultation with the Office of General Counsel, will review each proposed preference for consistency with fair housing and civil rights requirements. As part of this process, HUD may request the PHA or owner provide any additional documentation necessary to determine consistency with the PHA Plan and all applicable Federal fair housing and civil rights requirements.'' In this final rule, HUD clarifies that the Office of Fair Housing and Equal Opportunity, in consultation with the Office of General Counsel, may review proposed preferences as part of the PHA Plan review process. Approval of a PHA Plan does not constitute compliance with federal fair housing and civil rights requirements. As stated in the comment discussion of § 983.251, adoption of such preferences cannot conflict with Section 504 or other federal civil rights requirements. Further explanation of these issues is located in that discussion and in HUD's January 2017 notice.

*§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?*

HUD makes a minor revision to § 903.11(c)(1) and (3) to include the requirement that a PHA must identify its participation in the project-based assistance program in the streamlined Annual Plan consistent with the changes to § 903.7 made by this final rule.

HUD is also revising paragraphs (a)(3) and (c)(3). These paragraphs allow PHAs to submit a streamlined Annual Plan if they do not own or operate public housing. This final rule clarifies that PHAs that participate in the project-based assistance program are still eligible to submit a streamlined Annual Plan.

*§ 903.12 What are the streamlined Annual Plan requirements for small PHAs?*

In this final rule, HUD moves the PBV requirements previously located in § 903.12 to § 903.7 as described above. HUD makes a minor revision to § 903.12 to include the requirement that in the streamlined Annual Plan for Small PHAs, a PHA must identify its participation in the PBV program consistent with the changes to § 903.7 made by this final rule. HUD also makes express reference to project-based assistance in paragraph (b).

*§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?*

This final rule clarifies in § 903.13(b)(1) and (3) the requirements that Resident Advisory Board composition provides for reasonable representation of families receiving project-based assistance, in addition to families receiving tenant-based assistance.

*§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan and a PHA's Fair Housing requirements?*

This final rule clarifies in paragraph (c) that all admission and occupancy policies for section 8 project-based housing programs, in addition to public housing and section 8 tenant-based must comply with Fair Housing Act requirements and other civil rights laws and regulations and with a PHA's plans to affirmatively further fair housing.

*§ 982.4 Definitions*

In this final rule, HUD has revised the organizational structure of the cross-references for clarity and consistency with cross references in other sections. In addition, this final rule makes the following changes to definitions:

HUD adds the definition of ''building,'' to clarify that a building is a structure with a roof and walls that contains one or more dwelling units.

HUD adds the definitions of ''foster adult'' and ''foster child'' to the HCV program to clarify that foster adult and foster child are members of the household, but not members of a family. These definitions are identical to the definitions added by the Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104 final rule.[5]

HUD revises the definition of ''housing quality standards'' to make a technical correction to the existing definition and eliminate confusion regarding the use of the alternative inspection option. Under the statute, the term ''housing quality standards'' (HQS) refers to the standards prescribed by HUD under section 8(o)(8)(B)(i) or variations approved by HUD under section 8(o)(8)(B)(ii) of the United States Housing Act of 1937. While the alternative inspection option at § 982.406 allows a PHA to comply with the initial and regular inspection requirements by relying on an alternative inspection (*i.e.,* an inspection conducted for another housing program), that does not mean the standards of the alternative inspection become the applicable HQS for the HCV program. For example, assume a PHA places a unit under a HAP contract by using the alternative inspection option for initial inspections under § 982.406(e). Under that option, the PHA may place a unit under HAP contract on the basis that the unit passed an alternative inspection for a different housing program if certain conditions are met prior to conducting its own inspection. However, the PHA must still conduct its own HQS inspection within 30 days of receiving the Request for Tenancy Approval (RFTA) and may not make housing assistance payments to the owner until the PHA has inspected the unit. The PHA conducts its inspection of the unit based on the HQS established by HUD for the HCV program, not the housing standards that were applicable under the alternative inspection. Likewise, any interim inspection conducted by the PHA for a unit under HAP contract is to determine that the unit meets the HQS established by HUD for the HCV program, regardless of whether the PHA is relying on an alternative inspection of another housing program (that may have different standards) for regular inspections. For these same reasons, HUD is also revising the definition of HQS for the PBV program at § 983.3 and making conforming changes to §§ 982.401, 982.605(a), 982.609(a), 982.614(a), 982.618(b), 982.621, and 983.101(a) in this final rule.

HUD revises the definition of ''independent entity'' from the definition in the proposed rule to clarify when the unit of general local government meets the definition of an independent entity and more clearly explain the requirements and prohibited connections for a HUD-approved entity.

HUD revises the proposed definition of ''Request for Tenancy Approval (RFTA)'' to make clear that the RFTA may be submitted not just by the family, but also on behalf of a family.

HUD revises the definition of ''Small Area Fair Market Rents'' from the proposed rule to remove language suggesting that the definition only applies to areas meeting the definition at § 888.113(d)(2). HUD removed this reference because the SAFMRs in part 982 are not meant to be limited to the mandatory Small Area FMR metropolitan areas, and as such the ''Small Area Fair Market Rents'' definition deleted the citation to § 888.113(d)(2), which only covers mandatory metropolitan areas designated as Small Area FMR areas.

HUD revises the definition of ''tenant-paid utilities'' by stating that utilities and services may include those required by HUD through **Federal Register** notice with opportunity for comment.

*§ 982.54 Administrative Plan*

This final rule revises the requirements for the PHA Administrative Plan. Specifically, this final rule requires PHAs at § 982.54(d)(22) to specify in the Administrative Plan the PHA's policy for withholding HAP for units that do not meet HQS. This final rule also requires at § 982.54(d)(4)(iv) that the PHA Administrative Plan include the PHA's policy concerning residency for foster children and adults and requires at § 982.54(d)(23) that the PHA's Administrative Plan include the PHA's policy on assisting families with relocating and finding a new unit. This final rule also modifies § 982.54(d)(4)(iii) to include §§ 982.552, 982.554, and 982.55 as regulations that PHAs must follow in establishing their standards for denying admission or terminating assistance based on criminal activity or alcohol abuse and which must be included in their Administrative Plan. HUD's directives and guidance on a PHA's use of criminal activity as an admission screening factor are contained in PIH Notice 2015–19, *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions.* Through this notice and other issuances, such as the 2016 Office of General Counsel's Guidance on the Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, HUD has required PHAs to adopt admission policies that do not intentionally discriminate against members of a protected class or otherwise have an unjustified discriminatory effect on members of a protected class, even when the PHA has no intent to discriminate. HUD urges PHAs to achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing.

Consistent with the NSPIRE final rule, HUD modifies § 982.54(d)(21)(i) to require the PHA to include in its Administrative Plan any life-threatening deficiencies adopted by the PHA. Under the proposed rule, the PHA's Administrative Plan had to include the specific life-threatening conditions that would be identified through the PHA's inspections, including the HUD required life-threatening conditions and any life-threatening deficiencies adopted by the PHA prior to January 18, 2017. Since the deficiencies that HUD requires must be considered life-threatening are mandatory and not a matter of PHA administrative policy, requiring the PHA to list the HUD-required life-threatening deficiencies in the Administrative Plan is unnecessary and burdensome. In addition, singling out life-threatening deficiencies adopted by the PHA prior to January 18, 2017, which was related to how HUD initially implemented the non-life-threatening initial inspection option in the HOTMA Implementation **Federal Register** notice (82 FR 5458, published January 18, 2017), may create confusion. The revised text in this final rule clarifies that the Administrative Plan must include a list of any PHA designated life-threatening deficiencies that, in addition to all HUD-required life-threatening deficiencies, will be applied

[5] See ''Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104'' final rule at 88 FR 9600 (Feb. 14, 2023).

by the PHA, regardless of date that the PHA designated the deficiency as life-threatening.

*§ 982.301 Information When Family Is Selected*

This final rule makes changes to the information provided to a family when they are selected. For transparency and to ensure equal access, this section specifies that PHAs must provide information in a way that ensures meaningful access to individuals with limited English proficiency. Additionally, the final rule expands upon the requirement in the proposed rule to provide information on reasonable accommodation policies and procedures in the information packet, by also requiring that the packet specifically address an increase in the payment standard as a reasonable accommodation. The final rule also includes a requirement that reasonable accommodations must also be covered in the oral briefing. In this section, this final rule removes all references to the welfare to work program, since it no longer exists. Finally, this rule reorganizes paragraph (a) so that paragraph (a)(1) represents a list of what must be provided in an oral briefing, moving some content from paragraphs (a)(2) and (3); this reorganization does not change the requirements of paragraph (a) in any way.

*§ 982.305 PHA Approval of Assisted Tenancy*

This final rule reorganizes § 982.305(b) of the proposed rule by relocating paragraph (b)(2)(iii) of the proposed rule to a new paragraph (b)(3) and moving the previous paragraph (b)(3) to a new paragraph (b)(4). For clarity and simplicity, this final rule removes the requirement that the PHA determine that the unit is covered by the alternative inspection and simplifies this provision to state that an alternative inspection is allowed and alternatively cross references what the PHA is subject to and the alternative inspection option at § 982.406. In addition, this final rule does not make the proposed non-substantive change to paragraph (c)(3).

*§ 982.352 Eligible Housing*

This final rule changes proposed § 982.352(b)(1)(v)(A)(*3*) by removing the exception of applicability of § 982.405(e), acknowledging that sometimes independent entities schedule inspections, and in those cases, they must consider complaints and any other information brought to their attention.

*§ 982.401 Housing Quality Standards*

NSPIRE includes the new standards for setting HQS at § 5.703 for all HUD programs including the standards for life-threatening and non-life-threatening conditions and the amount of time required to correct such deficiencies. Other than a conforming change related to the revised definition of HQS discussed previously in the description of the changes to § 982.4, this final rule makes no change to the section as codified in the NSPIRE rule (88 FR 30442 (May 11, 2023)).

*§ 982.404 Maintenance: Owner and Family Responsibility; PHA Remedies*

HUD makes several clarifying revisions to this section, which includes changes to certain terminology such as changing ''fails to comply'' to ''has HQS deficiencies'' and consistently changing ''defect'' to ''deficiency.'' These clarifying changes also make it clear that a unit is ''not in compliance with HQS'' when it has deficiencies that are not remedied within the appropriate timeframe. This final rule also revises paragraph (a)(2) to provide clarifying changes from the proposed rule text that ensure the paragraph is clear that it does not provide a different requirement from the remainder of the section, and amends paragraph (a)(4) to align with the HOTMA statutory text. HUD provides in paragraph (b)(4) that, in the case of a family being responsible for HQS deficiency repairs, the family need not itself make the repairs but rather is responsible for taking all steps permissible under the lease and State and local law to ensure the deficiency is corrected. This is in response to commenters who pointed out that in some cases the lease or local law may prevent the family from undertaking the repairs itself.

The proposed rule used varying terminology to explain HQS inspections throughout parts 982 and 983. To promote clarity, this final rule replaces the varied terminology to explain HQS inspections and consistently uses the inspection terms outlined in § 982.405. This rule specifically names each type of inspection that exists within its respective section and specifies when actions or provisions apply to specific inspections. As such, this final rule also removes references to ''regular inspection'' since it was undefined in the proposed rule, and this final rule clarifies that § 982.404(d) applies to every inspection type other than initial inspections. This final rule also adds the requirement at paragraph (d)(1) that a PHA's Administrative Plan contains the conditions for withholding HAP from an owner for such deficiencies, to align with § 982.54.

In paragraph (d)(2)(i), this final rule clarifies that the abatement requirement includes amounts that had previously been withheld. To better protect families from homelessness, in paragraph (d)(2)(ii), HUD outlines the timeframe in which a PHA must issue a family its voucher to include at least 30 days prior to the termination of the HAP contract. In paragraph (d)(3), this final rule specifies that the family has discretion to terminate their lease and that the termination will occur either immediately or when the family vacates the unit, whichever is earlier. This final rule also includes the requirement that PHAs promptly issue the family a voucher to move. In paragraph (e)(3), HUD expands what is included in costs associated with relocating to include temporary housing costs. The final rule further provides that if the PHA uses the withheld and abated assistance payments to assist with the family's relocation costs, the PHA must provide security deposit assistance to the family as necessary, and that PHAs must assist families with disabilities in locating available accessible units in accordance with 24 CFR 8.28(a)(3).

Lastly, in paragraph (f), HUD provides that the revised § 982.404 applies to HAP contracts that are executed on or after the effective date of this final rule, as well as HAP contracts renewed after the rule's effective date.

*§ 982.405 PHA Initial and Periodic Unit Inspection*

HUD has made technical organizational changes to § 982.405 by dividing paragraphs and changing the headers to consistently use identifiable names for each inspection type. New paragraph (d) splits up the proposed paragraph (g) to specifically outline the types of interim inspections to include life-threatening, non-life-threatening, and extraordinary circumstances.

*§ 982.406 Use of Alternative Inspections*

HUD revises § 982.406 primarily to address issues with respect to compatibility between parts 982 and 983. Paragraph (a) now applies only to HCV, part 982 as HUD moved generally applicable language at proposed paragraph (a)(2) to paragraph (d) and removed the language at proposed paragraph (a)(3) applicable only to PBV. HUD also revises paragraph (c)(2)(ii) to align with the renumbering in § 982.405. This final rule revises paragraph (d) regarding use of alternative inspections to apply to both HCV and PBV, by removing specific citations to § 982.405.

These changes continue to require that any alternative inspection standard be identified in the PHA Administrative Plan for both HCV and PBV.

*§ 982.451 Housing Assistance Payments Contract*

In this final rule, the text from paragraph (c)(1)(i) has been moved under paragraph (c)(1), resulting in a renumbering of paragraphs (c)(1)(i)(A)–(E) from the proposed rule to (c)(1)(i)–(v) in the final rule. Paragraph (c)(1) now expressly states the requirement that the separate legal entity must execute the HAP contract with the PHA if it chooses the option of establishing a separate legal entity to serve as the owner. HUD deletes paragraph (c)(1)(ii) of the proposed rule and moves the text of proposed (c)(2)(i) under paragraph (c)(2) in the final rule. This final rule also revises paragraph (c)(2)(i) to clarify that the PHA-owned certification obligates the PHA, as the owner, to all of the requirements of the HAP contract. This revision prevents confusion with other regulations that reference HAP contracts, but not the PHA-owned certification. Finally, other minor changes were made in paragraph (c) to align with corresponding requirements in § 983.204(e).

*§ 982.503 Payment Standard Areas, Schedule, and Amounts*

HUD makes clarifying edits to paragraph (a)(1) to reflect HUD's practice of setting SAFMRs for ZIP codes outside designated SAFMRs. HUD also revises paragraph (d)(1) to explain the areas in which an exception payment standard may be established. In addition, in response to public comment, HUD revises paragraph (d)(2) to allow PHAs to set SAFMR-based exception payment standards above 110 percent of the FMR for non-metropolitan counties, just as they are currently permitted to do for metropolitan areas. This ensures parity between metropolitan and non-metro PHAs and provides non-metropolitan PHAs with the ability to establish exception payment standards that better reflect actual market conditions based on HUD's SAFMR determinations. In paragraph (d)(2), this final rule also allows PHAs that qualify for exception payment standards above 110 percent of the applicable FMR to set exception payment standards up to the same percentage of the SAFMR for the applicable ZIP code. HUD also divides proposed paragraph (d)(3) into paragraphs (d)(3) and (4) and moves proposed paragraph (d)(4) to (d)(5). In order to provide PHAs more flexibility to respond to rapidly changing rental markets, paragraph (d)(3) now provides set situations in which HUD will allow PHAs the discretion to establish an exception payment standard amount between 110 percent and 120 percent of applicable FMR upon notification to HUD that the PHA meets a specified criterion instead of requiring prior HUD approval. The PHA must meet one of three criteria: (i) Fewer than 75 percent of the families to whom the PHA issued tenant-based rental vouchers during the most recent 12-month period for which there is success rate data available have become participants in the voucher program; (ii) More than 40 percent of families with tenant-based rental assistance administered by the agency pay more than 30 percent of adjusted income as the family share; or (iii) Such other criteria as the Secretary establishes by notice. This change will allow PHAs to more quickly respond to changing rental market conditions, which will help them better manage program utilization, success rates, and rent burdens. New paragraph (d)(4) outlines how the PHA must request approval from HUD to establish payment standards above 110 percent of the applicable FMR except as provided in paragraphs (d)(2), (d)(3), and (d)(5). This new paragraph consolidates requirements related to exception payment standards for PHAs in designated SAFMR areas and for PHAs subject to the metropolitan area or non-metropolitan county FMRs. It also establishes criteria for designated SAFMR PHAs to request an exception payment standard over 110 percent of the SAFMR, which the current regulation previously stated would be provided in a separate **Federal Register** notice. Further, HUD revises paragraph (d)(4) to explain the application of the exception payment standard to the entire fair market rent area and the use of rental market data, specifically allowing the use of local rental market data. HUD provides clarifying changes to relocated paragraph (d)(5), which now specifies existing policy that PHAs may establish an exception payment standard of up to 120 percent of the applicable FMR without prior notification to HUD if they are seeking a reasonable accommodation for a person with a disability.

HUD also amends paragraph (e) by establishing a modified standard for approving payment standards below the basic range which will require a projection of rent burden based on the lower payment standard, rather than measuring rent burden based on current program participants prior to that reduction. The standard does allow HUD to approve a payment standard below the basic range to help prevent termination of assistance in the case of a PHA budget shortfall. In this final rule, HUD does not adopt the proposed rule modification to paragraph (e) and removes the PHA's option to go below the basic payment standard range for Small Area FMR ZIP code areas without HUD approval. In addition, HUD amends paragraph (f) to eliminate the option to establish success rate payment standards. HUD determined that the new flexibility provided in the rule to set payment standards up to 120 percent of the FMR makes this option unnecessary. In paragraph (h), this final rule specifies that HUD will monitor rent burdens only of families assisted with tenant-based rental assistance, because PBV tenants are unlikely to have rent burdens above 30 percent.

*§ 982.505 How To Calculate Housing Assistance Payment*

In this final rule, HUD revises paragraph (c)(3)(iv) to eliminate the option in the proposed rule for PHAs to adopt different policies related to applying decreases in payment standards in different geographic areas out of concern that this could result in discriminatory policies. Additionally, in response to public comment, HUD revises paragraph (c)(4)(ii) to require PHAs to apply payment standard increases at the family's next regular reexamination or the next interim recertification (in addition to the other events listed) and adds paragraph (c)(5) to give PHAs the flexibility to adopt policies to apply increases in the payment standard earlier than required. HUD also revised paragraph (c)(6), which was previously paragraph (c)(5), to clarify that while the new family unit size must be used in the recalculation by the first regular reexamination following the change, it may be used immediately.

*§ 982.517 Utility Allowance Schedule*

In response to public comments HUD is not going forward with the proposed § 982.517(a)(2), which would have required PHAs to provide the utility allowance schedule to HUD only when HUD requests it, and instead maintains the current requirement that the PHA provide HUD with the utility allowance schedule regardless of whether HUD requests it, and to only require the PHA to provide information or procedures used in preparation of the schedule when HUD requests it. HUD also revises paragraph (b)(1)(i) to allow for the possibility of an expansion of utility allowances in the future through a **Federal Register** notice. Additionally, in

paragraph (b)(1)(ii), this final rule expands the category of utilities and services to include applicable surcharges. In paragraph (b)(1)(iv), HUD removed wireless internet from the list of non-essential utility costs so that HUD could consider such inclusion of wireless internet as essential in a **Federal Register** notice under paragraph (b)(1)(i).

In paragraph (b)(2)(ii), HUD expands the utility allowance standards to include criteria for applying utility allowance to retrofitted units. The revised paragraph (b)(2)(ii) clarifies that while the entire building must meet Leadership in Energy and Environmental Design (LEED) or Energy Star standards, in the future HUD may provide by notice, when an energy-efficient utility allowance (EEUA) may be used for retrofitted units even if the entire building does not meet the standard. The revisions notes that there are only two design standards that can be used for energy-efficient utility allowance (EEUA) to prevent EEUAs from being applied broadly. HUD also moves paragraph (b)(2)(iv) to paragraph (b)(2)(v) and adds a new paragraph (b)(2)(iv) to state that the PHA must use the project-specific utility allowance schedule for tenant-based participants in projects that have an approved project-specific utility allowance under § 983.301(f)(4). This requirement was previously in § 983.301(f)(4) of the proposed rule and § 983.301(f)(2)(ii) of the previous regulatory text but has been moved from part 983. The Administrative Plan requirements to include PHAs state their policy for utility allowance payments are consistent with § 982.54.

*§ 982.552 PHA Denial or Termination of Assistance for Family*

This final rule makes a conforming change to remove § 982.552(c)(1)(viii), which denies housing assistance for a family's failure to comply with the FSS contract of participation, to align with a statutory amendment to the Family Self-Sufficiency (FSS) program authorizing language and the program's regulations, which amended 24 CFR 984.303(b)(5) through a final rule effective on June 16, 2022 (87 FR 30020). This change is in accordance with the Economic Growth, Regulatory Relief, and Consumer Protection Act (''the Economic Growth Act'') (Pub. L. 115–174) [6] which states that, ''Housing assistance may not be terminated as a consequence of either successful completion of the contract of participation or failure to complete such contract.''

*§§ 982.605; 982.609; 982.614; 982.618; 982.621*

The final rule makes a conforming change to §§ 982.605; 982.609; 982.614; 982.618; and 982.621 to align the text with the revised definition of HQS discussed previously in the description of the changes to § 982.4.

*§ 983.2 When the Tenant-Based Voucher Rule (24 CFR Part 982) Applies*

HUD revises § 983.2(c) to outline the specific part 982 provisions that do not apply to PBV assistance and revises paragraphs (c)(1) and (2) to specify that the HAP contract retention provisions at § 983.158(e)(2) do not apply to PBV assistance. HUD also clarifies in paragraph (c)(5) which provisions of part 982, subpart I do not apply to PBV assistance and in paragraph (c)(7)(i) which provisions of § 982.503 do not apply.

*§ 982.641 Homeownership Option: Applicability of Other Requirements*

The final rule amends paragraph (d) to clarify that § 982.406 (Use of alternative inspections), along with § 982.405 (PHA unit inspection) as the CFR previously provided, does not apply to the homeownership option. Because no HAP or downpayment assistance may be paid until the PHA inspects a family's homeownership unit and determines it passes HQS (see 24 CFR 982.631(a)), §§ 982.405 and 982.406 describing inspection requirements particular to rental assistance are incompatible with the homeownership option. HUD notes that this is not a substantive change.

*§ 983.3 PBV Definitions*

In response to public comment about the utility of establishing SAFMRs in some non-metropolitan counties, this final rule revises the definition of ''area where vouchers are difficult to use'' to include areas where 90 percent of the SAFMR exceeds 110 percent of FMR not just for metropolitan areas, but also for non-metropolitan counties. HUD determines that, when used in a non-metropolitan context, the difference between the SAFMR and FMR remains an easily identifiable and consistent data point for determining if an area is one in which vouchers are difficult to use.

This final rule also revises the definition of an ''area where vouchers are difficult to use'' to include a census tract with a poverty rate of 20 percent or less. This is not a substantive change, but rather a reorganization of the rule text for streamlining. In the proposed rule, § 983.54(b), regarding the project cap (income-mixing requirement), contained two separate categories of projects that were subject to a higher project cap: these categories were projects ''located in a census tract with a poverty rate of 20 percent or less'' and projects ''located in an area where vouchers are difficult to use.'' Similarly, § 983.6(d), regarding the program cap (percentage limitation), included both units ''located in a census tract with a poverty rate of 20 percent or less'' and units ''located in an area where vouchers are difficult to use'' as two separate categories of units eligible for an increased cap. For both the program cap and project cap, there was no difference between the requirements applicable to the two categories of projects and units. To simplify §§ 983.54(b) and 983.6(d), HUD examined whether the 1937 Act permitted the PBV regulatory definitions to consider a project or unit ''located in a census tract with a poverty rate of 20 percent or less'' to be a type of project or unit ''located in an area where vouchers are difficult to use.'' In the case of the program cap, section 8(o)(13)(B)(ii) of the 1937 Act provides for a specific 10 percent authority category for areas where vouchers are difficult to use ''as specified in subparagraph (D)(ii)(II),'' which is the subparagraph applying an exception to the project cap for areas where vouchers are difficult to use and for census tracts with a poverty rate of 20 percent or less. As a result, HUD determines that the authority for an exception to the program cap for census tracts with a poverty rate of 20 percent or less derives from the program cap exception for areas where vouchers are difficult to use, and therefore it would be more appropriate to include census tracts with a poverty rate of 20 percent or less within the definition of ''areas where vouchers are difficult to use.'' While the project cap exceptions for census tracts with a poverty rate of 20 percent or less and areas where vouchers are difficult to use are both mandated by section 8(o)(13)(D)(ii)(II) of the 1937 Act, given that the exception is identical for each category HUD determines the streamlining benefit makes placing census tracts with a poverty rate of 20 percent or less in the definition of ''areas where vouchers are difficult to use'' appropriate for purposes of codification of the project cap categories in the CFR.

Also, in response to public comment, HUD in this final rule changes the term ''comparable rental assistance'' to

[6] See The Economic Growth, Regulatory Relief, and Consumer Protection Act (''the Economic Growth Act'') (Pub. L. 115–174).

''comparable tenant-based rental assistance,'' amends the definition consistent with section 8(o)(13)(E) of the 1937 Act, and outlines the minimum requirements for assistance to qualify as comparable tenant-based rental assistance. HUD also finds that the proposed definition of ''development activity,'' in referring to both rehabilitation and new construction done for the project to receive PBV assistance and for other work occurring later during the term of the PBV HAP contract, produced significant confusion. As a result, HUD removes work occurring later during the term of the HAP contract from the proposed definition of ''development activity'' in this final rule and instead covers this work under a definition of ''substantial improvement.'' HUD revises the content of the term ''substantial improvement'' for additional clarity. This final rule also revises the definition of ''excepted units'' to clarify that excepted units exclusively serve certain families in accordance with § 983.54(c)(2) and to distinguish its definition from ''excluded units,'' which is a newly added definition that excludes units that meet certain requirements from the program and project cap.

As suggested by commenters, HUD revises the definition of ''existing housing'' to mean housing that meets or substantially complies with HQS, which housing is distinct from housing that will soon undergo development activity. ''Substantial compliance'' in this definition provides specific limitations to ensure the deficiencies in the project require minor work that can reasonably be completed within a 30-day period of time. These revisions reflect the need to better distinguish rehabilitated housing from existing housing so PHAs can comply with the distinct program requirements applicable to each housing type while also recognizing that HQS corrections may take a longer time than the period noted in the proposed rule. HUD changes the relevant time period in which existing housing is not expected to undergo or need substantial improvement from five years to two years after the HAP contract effective date in response to public comment. HUD also revises the definitions of ''newly constructed housing'' and ''rehabilitated housing'' by establishing a standard determined on a project-basis, rather than the prior unit-basis which was in the proposed rule, consistent with prior HUD guidance that a project can only be one type overall, and therefore specifying between the two types on a per-unit basis was impractical. HUD further amends the definition of ''rehabilitated housing'' to more directly note the difference between such projects and ''existing housing.'' HUD also clarifies the definition of ''independent entity'' to specify how it relates to the PBV program and revises the definition of ''waiting list admission'' to include owner-maintained waiting lists.

This final rule added to the definition of ''project'' to more clearly describe the discretion PHAs already have to modify the definition of project in their Administrative Plans. This final rule adds a definition of ''tenant rent'' as applicable to the PBV program. This final rule also adds the definitions for building, gross rent, manufactured home, PHA Plan, program receipts, total tenant payment, utility allowance, and utility reimbursement to clarify that these terms apply to the PBV program.

This final rule removes the term ''eligible'' from the definition of ''in-place family,'' and instead discusses the eligibility of an in-place family in § 983.251. HUD also changes ''proposal selection date'' to ''proposal or project selection date'' to align with changes made to § 983.51 (described below).

This final rule makes a conforming change to align the PBV program definition of ''housing quality standards'' with the revised HCV program definition discussed previously in the description of the changes to § 982.4.

In addition, this final rule removes the definition of ''project-based certificate (PBC) program'' because it is no longer in existence. Finally, this final rule removes the definition of ''request for release of funds and certification'' and moves the relevant information that was contained in the proposed rule to a more appropriate location, § 983.56.

*§ 983.4 Cross-Reference to Other Federal Requirements*

HUD proposed to revise HUD's labor standards cross-reference regarding applicability of regulations implementing the Davis-Bacon Act, but HUD at this final rule removes this change. As explained in the summary of changes to § 983.153, HUD requires Davis-Bacon compliance regardless of whether an Agreement (referring to an Agreement to enter into a HAP contract) is used in this final rule so the change to this section is no longer necessary. HUD notes that under section 12(a) of the 1937 Act, the labor standards provisions cross-referenced in § 983.4 only apply where there is an agreement for section 8 use before construction or rehabilitation is commenced. As discussed in reference to the changes to § 983.153, the PHA's pre-construction offer and owner's acceptance of PBV assistance to be provided once the units are constructed or rehabilitated constitutes an agreement triggering Davis-Bacon requirements on projects with 9 or more assisted units, in accordance with section 12(a) of the 1937 Act, regardless of whether an Agreement is used.

Finally, as a technical matter, HUD has revised § 983.4 to remove the reference to the definitions in 24 CFR part 5, subpart D. Because HUD has revised § 982.4(a)(2) to properly incorporate the relevant definitions in 24 CFR part 5, subpart D, and because § 983.4 incorporates 982.4, this incorporation is not necessary.

*§ 983.5 Description of the PBV Program*

HUD makes a minor revision to the proposed § 983.5(a)(1) to include the citation to the consolidated annual contributions contract (ACC). This final rule also revises paragraph (a)(3) to better describe the options available for development of newly constructed and rehabilitated housing, including adding reference to the option added in this final rule to § 983.157 (which is described in greater detail below). HUD revises paragraph (c) to require PHAs to provide notice to HUD when the PHA executes, amends,[7] or extends a HAP contract, to align with system development already in progress,[8] and makes changes to align with the language in § 983.10, to require the PHA to address all PBV related matters over which the PHA has policymaking discretion.

*§ 983.6 Maximum Amount of PBV Assistance (Percentage Limitation)*

This final rule revises paragraphs (a) and (e) to explain how to calculate the maximum number of PBV units to prevent the possibility of the PHA miscalculating the cap and project-basing more units than it should. This change reflects that the cap is 20 percent *as adjusted,* and not a flat 20 percent of all Annual Contributions Contract (ACC) units because the PHA must remove excluded units when calculating the cap. This final rule also corrects the date in paragraph (a)(2), and in paragraph (a)(3) expands the conditions under which the PHA may not add units to PBV HAP contracts to include

[7] Amendments in this context refers to changes such as those that add or substitute contract units, rather than substantive revisions to contractual text. The general requirement per 24 CFR 982.162 to use HUD-prescribed forms, including PBV HAP contracts, without modification remains in place.

[8] *See* 84 FR 70986 (Dec. 26, 2019); 85 FR 60249 (Sep. 24, 2020); 88 FR 28594 (May 4, 2023).

paragraph (e). In paragraph (b), HUD clarifies that the PBV assistance percentage limitation applies to all PBV units which the PHA has selected, and that selection takes place from the time of the proposal or project selection date.

This final rule also revises language in paragraph (d)(1)(iii) to require that the Administrative Plan describe the availability of supportive services in alignment with the language in § 983.10. HUD amends paragraph (d)(1)(iv) to remove the separate exception category for census tracts with a poverty rate of 20 percent or less, given the revised definition of an ''area where vouchers are difficult to use'' now includes a census tract with a poverty rate of 20 percent or less, as explained further in the discussion of § 983.3 above, and moves the proposed paragraph (d)(1)(v) to (d)(1)(iv). HUD adds a new exception in response to public comment to paragraph (d)(1)(v) for units that replace, on a different site, the units removed from the housing types listed in § 983.59(b)(1)–(2) (see discussion of comments received regarding § 983.59). HUD revises paragraph (d)(2) to increase the program cap and project cap for PBV units to include the Fostering Stable Housing Opportunity (FSHO) authority enacted in section 103 of division Q of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, 134 Stat. 1182).[9] Pursuant to section 103(c)(1) of FSHO, the percentage limitation (*i.e.,* the program cap) now includes units that are exclusively made available to eligible youth receiving FUP/FYI assistance under the 10 percent increased cap. This final rule adds a new paragraph (d)(3) to clarify requirements to fill units under certain 10 percent increased cap categories with the appropriate families.

This final rule also revises paragraph (e) by explaining that units previously subject to federally required rent restrictions or that received long-term rental assistance from HUD are removed for purposes of calculating the percentages under paragraphs (a) and (d) of this section.

This final rule also revises paragraph (1)(ii) by adding ''space service'' to the definition of ''veteran'' to accurately include types of service encompassed within the current statutory definition of ''veteran'' found in the Department of Veterans Affairs governing statutes (*i.e.,* 38 U.S.C. 101(2)). By adding ''space service,'' it will ensure that no type of service for a veteran or veteran family goes unaccounted for.

[9] *See* 87 FR 3570 (Jan. 24, 2022).

*§ 983.10 PBV Provisions in the Administrative Plan*

HUD revises the structure of § 983.10 to outline the areas in which PHAs have policymaking discretion specific to the PBV program and requires these policies be included in the PHA Administrative plan. The PHAs' policymaking discretion is noted throughout part 983 consistent with this section. Section 983.10 includes a brief description of the provisions that must be in the Administrative Plan for a PHA that operates a PBV program and a citation in each provision to the regulation that provides complete details about the requirement. However, HUD notes that the policies listed in § 983.10 are the minimum that the PHA must include in its Administrative Plan. There are additional areas, beyond those listed in § 983.10, where a PHA may properly exercise policy-making discretion consistent with language in other sections in this part. In cases where a PHA exercises this discretion, these additional policies must be included in the PHA's Administrative Plan.

*§ 983.11 Project-Based Certificate (PBC) Program*

In the proposed rule, HUD proposed to move § 983.10, dealing with Project-Based Certificates (PBC), to § 983.11. However, the PBC program was replaced by the PBV program in 2001 and no units remain in the PBC program.[10] Therefore, in this final rule, references to the PBC program have instead been removed. The currently codified § 983.10, dealing with PBC, is instead being removed entirely. Because the previous § 983.10 is not being moved to § 983.11, the proposed § 983.12 is, in this final rule, moved up to § 983.11. Section 983.12 of this final rule is new to this final rule and discussed further below.

*§ 983.11 Prohibition of Excess Public Assistance*

In response to public comments, HUD revises paragraph (d)(2) dealing with subsidy layering review. Instead of requiring Subsidy Layering Review (SLR) any time new funding of any amount or percentage is added to the project during the term of the HAP contract, HUD will specify when a new SLR is required via a **Federal Register** notice, consistent with current practice. HUD concluded that finalizing paragraph (d)(2) as proposed would be administratively burdensome.

[10] Units under a PBC Agreement executed by the PHA and Owner prior to January 16, 2001, remained in the PBC program. The maximum term for PBCs under standard-form PBC HAP contracts was an aggregate 15 years (generally, three 5-year terms). Therefore, no more valid PBC HAP contracts should exist. Upon expiration of a PBC HAP contract, a PHA and Owner could agree to renew the PBC contract as a PBV contract, consistent with section 6904 of the Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, and the now repealed 24 CFR 983.310(b)(1)(ii).

*§ 983.12 Project Record Retention*

This final rule adds a new § 983.12 to cover program accounts and records for the PBV program (§ 982.158 continues to apply to records applicable to both the tenant-based and project-based programs, except as now specified in § 983.2). While these documents should already be maintained for compliance with HUD's regulations, this section provides a specific list of documents, location, and time period for retention of the PBV HAP contract and any PBV-specific documents (*e.g.,* Agreement to enter into HAP contract (Agreement), completion documents, SLR, environmental review, selection materials), including records demonstrating the independent entity's review of a PHA-owned project selection. This section includes retention provisions for records newly required under new PBV program components of this final rule.

*§ 983.51 Proposal and Project Selection Procedures*

This final rule amends § 983.51 throughout to clarify the distinction between competitive selection of proposals versus noncompetitive selection of projects since selection without competition does not entail solicitation or selection of competing proposals. As recommended by commenters, this final rule revises paragraph (a) by allowing entities that have site control to submit PBV proposals. HUD intends to provide further guidance on what HUD considers to be ''site control'' through PIH notice.

Paragraph (a) also specifies that an owner may submit PBV proposals to cover multiple projects where each consists of a single-family building. Consistent with § 983.10, HUD clarifies the requirement that the PHA Administrative Plan must describe the procedures for submission and selection of PBV proposals under the methods of competitive selection in paragraph (b) and selection of projects under an exception to competitive selection under paragraph (c), including under what circumstances the PHA will use the selection methods described in paragraphs (b) and (c).

HUD amends paragraph (b)(1) to address the methods the PHA must use for competitive selection of PBV

proposals. This change clarifies that the PHA request for proposal (RFP) selection method can be a part of another competition or run simultaneously with another competition. This change also addresses public concerns about the inability or difficulty of awarding PBVs to projects that also compete and receive other funds, specifically development dollars through Low-Income Housing Tax Credits (LIHTC), Housing Trust Fund (HTF), and HOME investment partnerships program. HUD also makes clarifying changes to paragraph (b)(2) to remove the language concerning LIHTC and HOME to avoid confusion because, in practice, LIHTC and HOME almost always require the PBVs to be awarded prior to receiving applications.

HUD clarifies in paragraph (c) that prior to a PHA selecting one or more projects for PBV assistance without competition, the PHA must notify the public of its intent to do so in its 5-Year Plan. HUD also reorganizes paragraph (c)(1) in the proposed rule by moving applicable requirements to new paragraphs (c)(1)(i)–(ii). Further, in response to public comments, HUD adds clarifying language to paragraphs (c)(1) and (c)(2) to better align with the statutory language in section 8(o)(13)(N) of the 1937 Act as amended by HOTMA, including a clarification under (c)(1)(i) and a new paragraph at (c)(2)(iv) regarding the number of units permitted to be replaced.

This final rule also adds a new paragraph (c)(3), which provides increased flexibility for PHAs to noncompetitively select a project comprised of PHA-owned units. HOTMA expressly allows PHAs to attach PBVs to projects in which the PHA has an ownership interest without following a competitive process in cases where the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. HUD implemented this provision in 2017. Based on HUD's experience with these noncompetitive selections and after careful consideration, HUD believes that it is advisable to extend the exception to PHA-owned units in general. The main benefit of this final rule change is to strengthen the PHA's ability to preserve and expand affordable housing by increasing the viable options and paths available to the PHA through strategies such as acquisition followed by rehabilitation. HUD further adds paragraph (c)(4) to streamline the process of project-basing units when a family chooses to relinquish their enhanced voucher for PBV assistance. The new paragraph extends the types of housing that can be selected without going through a competition. HUD also notes that PIH Notice 2013–27 provides essential background on the voluntary relinquishment of enhanced voucher assistance (and regular housing choice voucher assistance) in exchange for PBV assistance.

HUD clarifies paragraph (e)(2)(i) to state that all contract units must fully or substantially comply with HQS on the proposal or project selection date. HUD also restructures and amends paragraph (f) of the proposed rule to add new paragraphs (1) through (5) to address the separate notice requirements depending upon whether a proposal is selected competitively, or a project is selected without competition and to provide a cross-reference to applicable language that must be in the notice for certain projects. Finally, HUD clarifies in paragraph (h) that under no circumstances may a HAP contract be effective for any of the subsidized housing types set forth in § 983.53(a).

*§ 983.52 Prohibition of Assistance for Ineligible Units*

HUD clarifies the meaning of paragraphs (a), (a)(3), (b), and (d) by replacing the term ''attach'' with clearer statements of the prohibited actions for the listed units, to align with the changes to § 983.53 described below. This final rule creates an exception to the total prohibition in the original PBV rule on project-basing for manufactured homes under paragraph (a)(5) where both the manufactured home is permanently attached to the ground and the owner owns both the manufactured home and the land. Allowing PBVs for manufactured homes will likely decrease the cost to build, allow PBVs to be in areas where traditional building would be difficult, and avoid requiring changes to construction plans solely for the purpose of compliance.

Paragraph (c) provides that a PHA may attach assistance to an occupied unit only if the occupant is eligible. HUD amends paragraph (c) to specify what ''eligible'' means in this context, and to clarify when eligibility is determined. Eligibility of the family is determined in accordance with § 982.201 prior to attaching assistance to the unit (*i.e.,* executing a HAP contract or amending a HAP contract by adding or substituting a unit). For the unit to be eligible, the unit must be appropriate for the size of the family and the tenant's total tenant payment (TTP) must be lower than the gross rent. These changes in paragraph (c) ensure PHAs are aware of existing requirements, including that the family's TTP cannot be so high as to eliminate the need for assistance (commonly calling being ''zero-HAP'') at admission.

HUD updates the exceptions applicable to paragraph (d), adding that the requirements are not applicable if the PHA is undertaking rehabilitation after HAP contract execution per § 983.157 of this final rule. Also, because an Agreement may be executed prior to its effective date, HUD revises paragraph (d) to be clear that the construction or rehabilitation is prohibited prior to the Agreement's effective date rather than the execution date. HUD also modifies paragraph (d) to allow PHAs to approve exceptions, in recognition that there may be circumstances in which the prohibition is inappropriate.

*§ 983.53 Prohibition of Assistance for Units in Subsidized Housing*

For better readability, in this final rule, HUD restructures the list of subsidized housing that is prevented from receiving PBV assistance. In paragraph (a), HUD replaces the introductory text with ''A HAP contract may not be effective and no PBV assistance may be provided for any of the following:'' for several reasons. First, HUD determines that PBV program requirements should not prevent execution of an Agreement for the listed subsidized housing types, as this reduces administrative flexibility even though no HAP is paid when an Agreement is executed. HUD notes that this is a change from the prior regulatory requirement and use of this flexibility will be subject to any requirements of the relevant non-PBV subsidy program. Second, because a HAP contract must be executed prior to the effective date of the contract (when HAPs may begin), there was no need to separately specify that the HAPs cannot be made for the subsidized housing types. Finally, HUD believes the wording changes improve readability. This final rule also removes proposed rule paragraphs (e) and (j) concerning rental assistance payments (RAP) and rent supplement projects (Rent Supp) because the Rent Supp and RAP programs have ended. However, unlike the Rent Supp program, there were some RAP projects remaining less than five years prior to the effective date of this final rule. Consequently, units in a few former RAP projects may still qualify for a limited period of time as excepted units from the program cap and project cap under the requirements at § 983.59. Please see the related discussion in the description of § 983.59 below regarding the reference to units in former RAP projects in that section.

*§ 983.54 Cap on Number of PBV Units in Each Project (Income-Mixing Requirement)*

In this final rule, HUD clarifies in § 983.54(a) that a PHA cannot select a proposal where the project cap is not being met, in addition to the prohibition on entering the Agreement or HAP contract. HUD amends paragraph (b) to remove the separate exception categories, given the revision of the definition of an ''area where vouchers are difficult to use'' to include a census tract with a poverty rate of 20 percent or less, as explained previously in the discussion of § 983.3 above. HUD further clarifies in paragraph (c) that exception categories in a project may be combined; expands the exception categories to include eligible youth using Family Unification Program (FUP) assistance in paragraph (c)(2)(ii); and provides that supportive services must be made available in a reasonable period of time not to exceed 120 calendar days in paragraph (c)(2)(iii). Additionally, in paragraph (c)(2)(iii), which was paragraph (c)(2)(ii) in the proposed rule, this final rule does not include a requirement that a PHA offering FSS must not solely rely on FSS to meet the exception to the project cap. HUD revises paragraph (c)(3) to specify that units covered by a PBV HAP contract under § 983.59 will not count towards the project cap and that these units are removed to ensure accuracy when calculating the percentages of dwelling units. In paragraph (d), HUD updates and expands provisions applicable to HAP contracts already in effect to include HAP contracts in effect prior to December 27, 2020, when the FUP exception became available.

*§ 983.55 Site Selection Standards*

HUD revises paragraph (b)(3) to include the site selection standards that were formerly found in § 982.401(l) and were removed in the NSPIRE final rule (88 FR 30442 (May 11, 2023)). HUD also takes this opportunity to amend the standards to add a specific reference to contamination, which is particularly important to the health of occupants, and to add a qualification that the serious adverse environmental conditions at issue are those that could affect the health or safety of the project occupants. As recommended by commenters, use of these standards provides an important protection for families, especially in cases in which an environmental review is not performed. HUD also revises paragraph (e)(7) to remove a typo concerning ''new construction,'' which appears in the current regulations and the proposed rule.

*§ 983.56 Environmental Review*

In the proposed rule, HUD proposed to revise the environmental review requirements for existing housing in accordance with section 106(a)(8) of HOTMA to exempt existing housing from further environmental review if an existing housing project has ever undergone an earlier environmental review pursuant to receiving any form of Federal assistance. In other words, if a project that meets the definition of ''existing housing'' as defined in the PBV regulations for program purposes has not previously undergone a Federal environmental review because it did not receive Federal assistance, then the project would not be exempt from an environmental review.

In endeavoring to give full effect to the words of section 8(o)(13)(M)(ii) of the 1937 Act, HUD recognizes the statute provides only a partial exemption to environmental reviews. Specifically, the applicability of the provision is limited to ''existing projects.'' Environmental reviews continue to be applicable to PBV rehabilitation and new construction projects. The limited scope of the proposed exemption from environmental reviews reflects Congress's continuing emphasis on the importance of Federal assistance being used in an environmentally sound manner.

Upon consideration of comments, HUD revises paragraph (a)(2) to better balance the words of the amended section 8(o)(13)(M)(ii) of the 1937 Act with Congress's continued environmental emphasis by excusing existing housing from undertaking an environmental review before entering into a HAP contract, except where a Federal environmental review is required by law or regulation relating to funding other than PBV housing assistance payments. This paragraph (a)(2) applies to projects selected using the site selection standards applicable upon the effective date of this final rule. In paragraph (a)(2), HUD changes the characterization of the exception for existing housing so as not to imply that the project has been determined to be ''exempt'' pursuant to an environmental review.

HUD makes minor technical revisions throughout the section, such as to consistently use the phrasing of paragraph (a) of the proposed rule that environmental reviews apply to ''activities'' (see responses to comment on § 983.56 for further discussion of technical changes). HUD amends the description of the ''responsible entity'' in paragraph (b) to explain more clearly which unit of general local government serves as the responsible entity. HUD also removes the final sentence of paragraph (b) of the proposed rule, as it was duplicative of text that appeared later in the regulation. HUD also removes the proposed rule's reference in paragraph (d) to amending a HAP contract, to conform to changes described below relating to § 983.207. Further, HUD clarifies in (d)(2) that HUD will approve the Request for Release of Funds and Certification by issuing a Letter to Proceed or form HUD–7015.16 when a responsible entity must complete an environmental review. In paragraph (e), HUD clarifies that the reference to the prohibited activities refers only to the listed actions by the PHA, the owner, or its contractors, rather than the actions by described in paragraphs (d)(1)–(3) that are taken by the responsible entity or HUD. Lastly, HUD revises paragraph (f) to require PHAs to document mitigating measures in accordance with part 50 or 58 of title 24, as applicable, and to complete or require the owner to carry out such measures and conditions.

*§ 983.57 PHA-Owned Units*

This final rule makes an edit to paragraph (b) to remove superfluous words. HUD also revises paragraph (b)(1) to clarify that the independent entity calculates the amount of reasonable rent and any rent adjustments by an OCAF, due to confusion the wording in the proposed rule raised given that HUD determines the OCAF. In response to comments received, HUD removes paragraph (b)(2) from the proposed rule, which results in a renumbering of paragraphs (b)(3) and (b)(4) to paragraphs (b)(2) and (b)(3) in this final rule. HUD also revises redesignated paragraph (b)(3) to clarify that the independent entity is responsible for not only reviewing the work completion certification, but also determining if the units are compliant with § 983.156. This final rule also makes this change to align redesignated paragraph (b)(3) with corresponding § 983.212 (which was § 983.157 in the proposed rule), per changes to § 983.212 described below. This final rule adds paragraph (b)(4) to expand the independent entity functions to include determining whether to approve substantial improvement to units under a HAP contract, since PHAs are required to perform this function for substantial improvement on units under a HAP contract for non-PHA-owned units.

Finally, HUD reorganizes and slightly modifies the language at paragraph (c) to

achieve consistency with a similar provision at 982.352(b)(1)(v)(B) regarding compensation of independent entities.

*§ 983.58 PHA Determination Prior to Selection*

In this final rule, HUD revises proposed § 983.58 for clarity purposes, to avoid any misinterpretation that budget authority is intertwined with the program cap. HUD also adds a new paragraph (b) to require that PHAs analyze the impact of having a high percentage of vouchers committed as PBVs. The PHA should consider the needs of the community, including families on the waiting list and eligible PBV families that wish to move under § 983.261. The analysis performed by the PHA must be available as part of the public record.

*§ 983.59 Units Excepted From Program Cap and Project Cap*

HUD clarifies in paragraph (b) that excluded units must fall into one of the outlined categories provided that the units are removed from all categories by the time of execution of the Agreement or HAP contract. This clarification aligns with the statutory language stating, ''units previously subject to federally required rent restrictions or receiving another type of long-term subsidy'' and means that the units must no longer be subject to the rent restriction or receiving subsidy.

This final rule removes paragraph (b)(1)(v), because the Rent Supplement Program ended more than five years ago and no longer exists. HUD notes that the Rental Assistance Program (RAP) (section 236(f)(2) of National Housing Act of 1965) also expired, but, unlike the Rent Supplement Program, the RAP expired at the end of 2019, less than 5 years ago. Because paragraph (b) of § 983.59 allows project-basing of units that were removed from the listed programs up to 5 years prior to the request for proposals (RFP) or the proposal or project selection date, RAP units may still be eligible for project-basing under paragraph (b).

HUD has amended § 983.59(b)(2) and included two additional types of units in the list of units ''previously subject to federally required rent restrictions'' that were not included in the list of excepted units implemented under the HOTMA Implementation Notices [11] in the **Federal Register**: (1) units financed with Low-Income Housing Tax Credits (26 U.S.C. 42) and (2) units subsidized with Section 515 Rural Rental Housing Loans (42 U.S.C. 1485). The final rule also amends § 983.59(b)(2) to provide that the list of excepted units ''previously subject to federally required rent restrictions'' shall also include any other program subsequently identified by HUD through a **Federal Register** notice that is subject to public comment.

Further, to provide regulatory streamlining, this final rule removes proposed rule paragraph (c) which provided that other excluded units include both HUD's Rental Assistance Demonstration (RAD) program and HUD VASH set-aside vouchers from the PBV program and project caps (these programs continue to be governed by the applicable notices and waivers therein). Instead, HUD redesignates proposed rule paragraph (d) as paragraph (c), which discusses replacement units. In redesignated paragraph (c), HUD clarifies that replacement units can be built on the original project site, instead of the ''public housing development.'' This clarification removes the limitation of ''public housing development'' and expands the qualification of an original project site to include all of the formerly assisted or restricted projects covered by this section. In new paragraph (e), this final rule clarifies that the 10 percent exception under § 983.6 and the project cap exception under § 983.54(c)(2) are inapplicable to units excluded under this section.

*§ 983.101 Housing Quality Standards*

This final rule makes a conforming change to align paragraph (a) with the revised PBV program definition of HQS at § 983.3.

*§ 983.103 Inspecting Units*

HUD revises § 983.103(a) to clarify that the regulatory inspection provisions of paragraph (c) of this section apply only when the pre-selection inspection determines the project meets the definition of existing housing.

HUD amends paragraph (b) to specify the times at which an initial inspection is required for newly constructed or rehabilitated housing or for units that underwent substantial improvement prior to being added to the HAP contract. The times at which an initial inspection is required, and the specific units which are to be inspected, depend on whether the work was development activity or substantial improvement, and, in the case of rehabilitation, whether the development activity occurs before or after HAP contract execution. HUD believes separating the requirements in this final rule will improve readability. HUD also revises paragraph (c)(1) to better explain the Administrative Plan provisions that are applicable.

Paragraph (c)(2)(ii) of the proposed rule provided that the PHA must give a notice to families offered a unit with non-life-threatening deficiencies that explains, among other things, that the owner's failure to correct the deficiencies within the cure period will result in removal of the unit from the HAP contract. This final rule revises paragraph (c)(2)(ii) to also require the PHA to provide a similar notice to families offered units without deficiencies, if some units in the project have non-life-threatening deficiencies and the PHA's Administrative Plan provides that the PHA will terminate the entire PBV HAP contract if the owner fails to correct the deficiencies within the cure period.

In paragraph (c)(2)(iv), HUD revises the regulatory language to be clear that PHAs must release the withheld payment to the owner once the deficiencies are corrected within the cure period, as required by section 8(o)(8)(G)(ii) the 1937 Act. This statutory requirement provides that the PHA must resume assistance payments and must cover the withheld period if the owner made the repairs before the cure period ends. This change to align the regulations with the statute is also reflected in paragraphs (c)(3)(vii), (c)(4)(iv), and (c)(4)(v).

This final rule also modifies paragraph (c)(2)(v) (which was mistakenly labeled as paragraph (c)(2)(iv) in the proposed rule) by requiring PHAs to provide any affected family tenant-based assistance when the PHA terminates the PBV HAP contract or removes the unit from the HAP contract due to the owner's failure to correct deficiencies. The provision of tenant-based assistance in this circumstance is required by section 8(o)(13)(F)(iv) of the 1937 Act and was inadvertently omitted from the proposed rule's description of the process. This final rule makes the same modification to paragraphs (c)(3)(viii) and (c)(4)(vi).

HUD revises paragraphs (c)(3) and (c)(4) to align with changes in § 982.406 that apply to PBV. This final rule subjects the PHA's adoption of an alternative inspection option to the procedures and requirements outlined in § 982.406(b), (c), (d), and (g). The changes in paragraph (c)(3)(v) provide clarifying changes to existing established policy. To ensure that the PHA is transparent to families that are referred to and provided a unit with non-life-threatening deficiencies, this final rule revises paragraph (c)(4)(i) to require that PHAs provide these families

[11] *See* 81 FR 73030 (Oct. 24, 2016); 82 FR 5458 (Jan. 18, 2017); 82 FR 32461 (Jul. 14, 2017).

a list of those deficiencies and inform them of the option to decline the unit without losing their place on the PBV waiting list.

In paragraph (c)(4)(v), HUD clarifies that PHAs make retroactive payments upon correction of deficiencies beginning at the later of the effective date of the HAP contract or the PBV lease effective dates. This final rule revises paragraph (c)(4)(v) and (c)(4)(vi) explaining the PHA's requirements when the owner fails to make repairs within the applicable time periods. For the safety of the family, this final rule adds a requirement to paragraph (c)(4)(v) that explicitly prohibits PHAs from referring families from the PBV waiting list to occupy units with life-threatening deficiencies. In alignment with § 983.10, paragraph (c)(4)(vi)(B) clarifies that the PHA's Administrative Plan must specify whether the PHA will remove only a unit with deficiencies from the HAP contract for the owner's failure to correct the deficiencies, as opposed to terminating the entire HAP contract (only the latter, terminating the contract, had been included in paragraph (c)(4)(vi)(B) of the proposed rule).

This final rule also amends paragraph (e) concerning periodic inspections, to provide that the alternative inspection option is available for periodic inspections and to specify which provisions of § 982.406 apply. HUD makes changes to paragraph (e) to specify how to comply with the sampling requirement in the event that fewer than 20 percent of contract units are available for occupancy in accordance with development activity occurring under § 983.157. HUD also makes changes to align with the NSPIRE final rule (88 FR 30442 (May 11, 2023)) in paragraph (e), which incorporates the requirement that small rural PHAs inspect random sample units at least once every three years. This final rule makes changes to paragraph (f), which specifies the PHAs' timing and inspection requirements for life-threatening deficiencies, non-life-threatening deficiencies, and extraordinary circumstances, to align with § 982.405, which covers PHA inspections. The changes in paragraph (i) are a change in terminology to avoid conflict with the term ''mixed finance'' as used in public housing projects.

*§ 983.152 Nature of Development Activity*

This final rule revises § 983.152(a)(2) to remove discussion of substantial improvement to add previously unassisted units and instead provide reference to the development activity applicable to a rehabilitated project undergoing work after HAP contract execution per § 983.157 of this final rule. As discussed in the description of changes to § 983.3 above, HUD determines that ''development activity'' should be clearly distinguished from ''substantial improvement.'' As a result, HUD removes the corresponding reference to activities now classified as ''substantial improvement'' in (a)(2) and deletes paragraph (b)(2), moving pertinent requirements applicable to substantial improvement to add or substitute units to § 983.207(d) of this final rule. The new language of paragraph (a)(2) is added to clearly describe the nature of the development activity under § 983.157, which is completed following HAP contract execution instead of beforehand. HUD also updates paragraph (b) to appropriately reference the new requirements applicable to § 983.157.

*§ 983.153 Development Requirements*

This final rule makes several minor revisions to citations in § 983.153 for consistency with the changes to § 983.152 described above. Also, this final rule makes a minor clarifying revision to the first sentence in paragraph (b)(2), by requiring subsidy layering review before a PHA attaches assistance to a project, instead of subsidy layering review occurring before a PHA commits to provide assistance to a project. This clarifying change is to prevent any possible ambiguity about whether the subsidy layering review is required before the proposal or project selection date; in other words, HUD makes clear that the rule only requires that the subsidy layering review occur no later than execution of an Agreement or HAP contract.

This final rule requires in § 983.153(b)(4) that the owner disclose changes to the information provided for the subsidy layering review, to ensure that the change(s) may be reviewed and that it does not result in excessive public assistance to the project.

This final rule revises paragraph (c) of the proposed rule to require Davis-Bacon compliance regardless of whether an Agreement is used. The PBV program is subject to statutory labor standards provisions in section 12(a) of the 1937 Act. Section 12(a) of the 1937 Act requires the applicability of Davis-Bacon prevailing wages to the development of low-income housing projects containing nine or more section 8-assisted units, where there is an agreement for section 8 use before construction or rehabilitation is commenced. In reconsidering both HUD's current position and the alternative suggested in the proposed rule with respect to the meaning of ''agreement'' in section 12(a), HUD has determined that an ''agreement'' under section 12(a) encompasses more than the PBV Agreement (*i.e.,* Form HUD–52531) and includes the agreement that consists of the PHA's project selection and resulting offer of assistance to the owner, and the acceptance of PBV assistance by the owner. HUD also recognizes the importance of Davis-Bacon prevailing wage requirements to the workers in the community where the owner has sought a commitment of PBVs in advance of development, as commenters suggested. Consequently, HUD will require the notice of proposal selection to require payment of Davis-Bacon prevailing wages for development of newly constructed or rehabilitated projects containing nine or more section 8-assisted units regardless of whether the PHA and owner will be using an Agreement. This final rule also makes a slight modification to paragraph (c)(1) to correct the citation in paragraph (c)(1). HUD also consolidates paragraphs (c)(2) and (c)(3) of the proposed rule into a single paragraph (c)(2), to better reflect that the labor requirements at issue apply in the case of development involving nine or more contract units. This final rule adds a citation to § 983.51(f) in paragraph (c)(3) (which had been paragraph (c)(4) in the proposed rule) and makes paragraph (c)(3) consistent with § 983.51(f), which discusses a PHA's written notice of proposal selection.

This final rule revises the development requirements that apply to PBV development activity by removing the reference that section 3 of the HUD Act of 1968 [12] applies (proposed rule paragraph (d)), since section 3 no longer applies to PBV per the final rule on Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses (85 FR 61524 (Sep. 29, 2020)). As a result of this removal, this final rule also redesignates proposed rule paragraphs (e) through (g) as final rule paragraphs (d) through (g). Additional citation corrections occur in redesignated paragraphs (d), (e), and (f). Further, consistent with § 983.51(k), this final rule expands paragraph (g) to include in the list of participants ineligible to participate in Federal programs and activities those who are debarred, suspended subject to a limited denial of participation, or otherwise excluded

[12] 12 U.S.C. 1701u.

under 2 CFR part 2424. Finally, HUD adds a cross-reference § 982.161 to paragraph (g)(2) of this final rule, to clarify the existing requirement of the conflict of interest provision.

*§ 983.154 Development Agreement*

This final rule amends paragraph (a) to clarify project-basing of single-family scattered sites. As commenters suggested, paragraph (a) allows one Agreement to cover multiple projects that each consist of a single-family building. Finally, this final rule makes minor amendments to paragraph (a) to remove reference to § 983.152, consistent with changes to that section as described above, and to add reference to the new paragraph (g).

This final rule specifies in paragraph (b) that paragraph (f), concerning PHA discretion to execute an Agreement after construction or rehabilitation in compliance with § 983.153, is an exception for the timing of the Agreement. HUD also adds clarification that the Agreement must be executed on the same day as or in advance of its effective date.

This final rule inserts a new paragraph (c) to specify that the PHA and owner may agree to amend the Agreement per paragraph (e). In paragraph (d), this final rule clarifies that paragraphs (f) and (g) provide exceptions to the prohibition on entering into an Agreement if development activity has commenced. HUD also makes additional changes in paragraph (d) to clarify the timing of the Agreement that correspond to the change to paragraph (b) described above. This final rule revises paragraph (e) to expand the content of the agreement to include a description of any rehabilitation work agreed to, a deadline for the completion of work, and any additional design, architecture or quality requirements placed on the owner by the PHA. The addition of a deadline for completion of work addresses the oversight in the proposed rule wherein § 983.155(a) of the existing regulation was removed rather than relocated.

This final rule clarifies in paragraph (f) when the PHA may execute an Agreement later than the timing provided in paragraph (b) and corrects the applicability of requirements in the case of a project that is noncompetitively selected. The changes in paragraph (f) also provide PHAs with discretion to not use an Agreement or execute an Agreement after construction or rehabilitation for development activity in compliance with the requirements under § 983.153. Paragraph (f) also requires that the PHA explain the circumstances under which the PHA will enter a PBV HAP contract without first entering into an Agreement and the circumstances the PHA will enter into an Agreement after construction or rehabilitation in the Administrative Plan. This paragraph also requires that the PHA comply with the new requirement at § 983.153(c)(3) and confirm owner compliance with the owner's requirements under § 983.153. Finally, this final rule makes a minor amendment to paragraph (f) to remove reference to § 983.152, consistent with changes to that section as described above.

This final rule adds paragraph (g) to explain the exception to the requirement to enter into an Agreement established in § 983.157. Paragraph (g) also explains the relationship between the Agreement and the HAP contract in the event that some work occurs under an Agreement before the PHA exercises the option at § 983.157.

Lastly, this final rule adds paragraph (h) explaining the PHA's options when the units are PHA-owned with no separate legal entity to serve as the owner. A PHA cannot execute an Agreement with itself. In the proposed rule, HUD stated that a PHA-owned agreement certification is not needed as an alternative to an Agreement because projects may now be developed without an Agreement. Upon further review, HUD determined that there may be situations in which development without an Agreement is not feasible, such as when a lender requires use of an Agreement or equivalent commitment prior to development. Therefore, this final rule provides that unless a PHA is exercising its discretion not to use an Agreement, the PHA will need to follow a process similar to the process adopted in this final rule for executing the HAP contract or an equivalent certification (see § 983.204). For consistency with § 983.204 of this final rule, HUD provides that PHAs have the option to either establish a separate legal entity to execute the Agreement or use a PHA-owned agreement certification in this final § 983.154(h).

*§ 983.155 Completion of Work*

In tandem with requiring the owner to submit evidence and certify to the PHA that development activity or substantial improvement is completed, this final rule adds that a PHA must review the owner's completion evidence and determine whether development activity or substantial improvement was completed. This final rule also adds a new paragraph (b) for consistency throughout part 983 and to specifically address completion of work for PHA-owned units. Paragraph (b) provides in the case of a PHA-owned unit, the PHA must submit that evidence to the independent entity and the review is the responsibility of the independent entity. Finally, HUD clarifies that the form and manner of the submission and certification is specified in the PHA's Administrative Plan.

*§ 983.156 PHA Acceptance of Completed Units*

This final rule makes a minor revision to paragraph (a) to clarify that the PHA inspection is to determine whether the units comply with HQS and additional PHA requirements. HUD revises paragraph (b) to provide specific instruction with regard to completion of units, depending on whether the units are completed prior to HAP contract execution, following HAP contract execution, or in order to be added to the HAP contract. These changes to paragraph (b) accommodate changes to §§ 983.152 and 983.157, as discussed further in the description of changes to those sections. In response to public comments, this final rule adds a new paragraph (c) to provide that HAP contracts for projects that are not subject to § 983.157 may be executed in stages, as units in a newly constructed or rehabilitated project are completed. This final rule also adds paragraph (d) for consistency throughout part 983, to separate PHA-owned units from other units. Under new paragraph (d), this final rule requires that independent entities inspect units and determine whether those units are HQS-compliant.

*§ 983.157 Rehabilitated Housing: Option for Development Activity After HAP Contract Execution*

In the proposed rule, HUD proposed to include provisions on substantial improvements (previously termed ''development activity,'' as explained in the discussion of § 983.3 above) to units under a HAP contract in § 983.157. However, HUD determines that such provisions are inappropriate under subpart D of part 983 (Requirements for Rehabilitated and Newly Constructed Units), as placing the provision there produced confusion about the distinction between development activity for newly constructed and rehabilitated projects and work to improve units well after a HAP contract is in effect (which could be performed in any type of project). Therefore, in this final rule, the provisions proposed to be in § 983.157 have been moved to § 983.212 and are discussed in that section below. Section § 983.157, as codified in this final rule, instead is new

to this final rule and discussed further here.

This final rule adds the new provisions of § 983.157 in response to public comment. Commenters described situations in which development activity would be undertaken in rehabilitated projects that are already occupied and may meet HQS. HUD determined that occupants of such projects, if they qualify for PBV assistance, would benefit from receipt of assistance as soon as possible. Accordingly, and in addition to the options already available to the PHA under current regulations and in this final rule, § 983.157 of this final rule provides that the PHA may allow an owner of a rehabilitated housing project to conduct some or all of the development activity during the term of the HAP contract. Under this option, the PHA and owner place all proposed PBV units under the HAP contract before the owner completes development activity, subject to the limitations established in § 983.157 of this final rule. During the period of development activity, the PHA makes assistance payments to the owner for the contract units that are occupied and meet HQS. HUD determines this option is permissible in accordance with section 106(a)(4) of HOTMA.

Section 983.157 of this final rule provides for the PHA to exercise its discretion to use this option in accordance with the PHA's Administrative Plan. It establishes conditions that must be met to use this option and a contract framework, which applies a contract rider during the development period. Section 983.157 of this final rule also establishes requirements applicable to the occupancy of units during the rehabilitation period, completing the rehabilitation, and PHA-owned units. Under this option, the owner agrees to develop the contract units to comply with HQS, and the PHA agrees that, upon timely completion of such development activity in accordance with the terms of the rider, the rider will terminate and the HAP contract will remain in effect. HUD makes conforming changes throughout part 983 to accommodate this option (discussed further in the review of general technical changes below). The final rule clarifies that existing households be given an absolute selection preference to return to the project when a household needed to vacate for development activity. HUD notes that the leasing of units in a PBV project must comply with federal fair housing and related requirements, including ensuring that any designated accessible units are occupied by households who need the accessibility features, and that emergency transfers under VAWA are provided.

*§ 983.202 Purpose of HAP Contract*

In response to public comments, HUD revises paragraph (a) to better clarify the existing flexibility that allows PHAs and owners to place multiple projects that each consist of a single-family building under one HAP contract.

*§ 983.203 HAP Contract Information*

HUD in this final rule revises § 983.203(h) to require that the HAP contract include units that are restricted to certain occupants via the project cap or program cap. The purpose of the change is in hopes of minimizing the possibility of PHAs losing track of what units must be set aside by ensuring that the HAP contract clearly specifies units that are restricted to certain occupants by virtue of the project cap *or program cap*. The changes in this section are consistent with the Fostering Stable Housing Opportunities (FSHO) notice,[13] which notes that the increased program cap applies only if a family eligible for that 10 percent authority resides in the unit—this means PHAs need to keep track of the units that are under the increased program cap that must be set aside for occupancy by qualifying families (as was already required for the project cap).

*§ 983.204 Execution of HAP Contract or PHA-Owned Certification*

This final rule amends § 983.204(b) and (c) to clarify that HAP contracts must be promptly executed and effective as described. This final rule also amends paragraph (c) to specify requirements applicable to projects undergoing development activity after HAP contract execution, as described further above in the discussion of changes to § 983.157. This final rule inserts a new paragraph (d) to clarify that the effective date of a PBV HAP contract must be on or after the execution date of the PBV HAP contract. HUD also amends and reorganizes paragraph (e), which was paragraph (d) in the proposed rule, to align with corresponding requirements in § 982.451(c). Redesignated paragraph (e)(1) now expressly states the requirement that the separate legal entity must execute the HAP contract with the PHA, and HUD deletes paragraph (d)(1)(ii) from the proposed rule. HUD has revised paragraph (e)(2)(i) of this final rule to clarify that the PHA-owned Certification obligates the PHA, as owner, to all of the requirements of the HAP contract. This revision prevents ambiguity with other regulations that reference HAP contracts but not the PHA certifications.

*§ 983.205 Term of HAP Contract*

HUD amends the extension of term provision in § 983.205(b) to clarify the process for HAP contract term extensions and, while it retained the maximum extension term of 20 years that was in the proposed rule, provides a mechanism to execute multiple extensions concurrently as supported by commenters. Also, HUD removes the proposed paragraph (c) concerning independent entity oversight of the contract term and extensions for PHA-owned units, in response to public comments.

*§ 983.206 Contract Termination or Expiration and Statutory Notice Requirements*

HUD makes changes in this final rule to clarify the process for when a PHA manages the issuance of tenant-based vouchers to tenants at PBV contract termination, and related issues. Specifically, for § 983.206(a)(3), this final rule expands the definition of the term ''termination'' to include termination of the HAP contract by agreement of PHA and owner. As a necessary precondition of the statutory right to remain, in paragraph (b), this final rule also adds provisions specifying that the right to remain in a unit depends on the unit continuing to be used for rental housing and clarifies procedures for voucher issuance. As suggested by public comments, HUD provides additional clarification in paragraph (b) to specify that the PHA must issue vouchers, provide a timeframe for issuance, and require units to be removed from the contract if the family moves. HUD also moved the language in proposed paragraphs (b)(4) and (b)(5) into paragraph (b) to cover all families that are issued a voucher as the result of a PBV contract termination or expiration. This final rule made this change because the language in paragraphs (b)(4) and (b)(5) are applicable regardless of whether the family uses the voucher in the same project or in other housing.

After consideration of public comments, this final rule revises paragraph (b)(4) (proposed paragraph (b)(6)) to expand upon the exceptions in which an owner may refuse to initially lease and to limit ''other good cause'' to tenant misconduct and where the owner uses the unit for a non-residential purpose or renovates the unit. However, HUD provides a process by which families must be permitted to remain in

[13] *See* 87 FR 3570 (Jan. 24, 2022).

or return to the project, if possible, when a renovation occurs, to best fulfill the PBV statutory requirement allowing the family to remain, as provided by HOTMA section 106(a)(4). This final rule also changes paragraph (c) to clarify that expiring funding increments, which are a normal part of PHA operations, do not constitute insufficient funding. Paragraph (c)(2) includes a change specifying the respective section and paragraph that applies for HAP contract breaches involving failure to comply with HQS and other contract breaches. Lastly, this final rule adds paragraph (e), which provides the PHA and owner the discretion to terminate and how the owner and PHA can terminate their HAP contract.

*§ 983.207 HAP Contract Amendments (To Add or Substitute Contract Units)*

This final rule clarifies in paragraph (a) that substituted units may be vacant or, subject to paragraph (c), occupied. The final rule also removes the phrase ''and subject to all PBV requirements'' from paragraph (a) since the phrase is unnecessary and created confusion as to what requirements were at issue. HUD notes that this textual change is made for clarity only, and substitutions under paragraph (a) remain subject to all PBV requirements. HUD also clarifies the HQS and reasonable rent requirements to affirm that the unit must meet HQS and the rent must be reasonable in order to substitute the unit. Finally, the final rule includes in paragraph (a) a cross-reference to the requirements regarding units undergoing repairs or renovation before substitution (paragraph (d) in this final rule) and units that are newly built (paragraph (e) in this final rule).

HUD adds a requirement in paragraph (b), which provides that prior to adding a unit, the PHA must inspect the unit to determine that it complies with HQS, and the PHA must determine the reasonable rent for the unit. These additional requirements correspond to the same requirements that apply when substituting a unit. This final rule removes from paragraph (b)(1), which covers excluded and excepted units to the program or project cap, the citation to § 983.6, which discusses the percentage limitation for PBV units and discusses the types of units that will count toward the program cap.

HUD also revises paragraph (b)(3), moving the content of the proposed paragraph (b)(3) to a new paragraph (d) and including in paragraph (b)(3) only a cross-reference to paragraph (d). Paragraph (d) also contains significantly different text than that which appeared in proposed paragraph (b)(3). In accordance with the change to the definition of ''development activity'' described above in the discussion of changes to §§ 983.3 and 983.152, HUD replaces reference to ''development activity'' with reference to ''substantial improvement.'' Because projects containing units needing substantial improvement within the first two years must be categorized as rehabilitated housing (per discussion of changes to § 983.3 above), this final rule establishes that units may not undergo substantial improvement to be added to the project during this timeframe, barring extraordinary circumstances. For units that will undergo substantial improvement, HUD adds explanation of applicable requirements within paragraph (d), rather than referencing § 983.152 as proposed.

HUD similarly revises paragraph (b)(4) by moving the content of the proposed paragraph (b)(4) to a new paragraph (e) and instead including in paragraph (b)(4) only a cross-reference to paragraph (e). Paragraph (e) of this final rule also contains additional criteria beyond those that appeared in paragraph (b)(4) of the proposed rule. This final rule adds, in paragraph (e)(2), an amendment to the proposed requirement to address instances in which contract units are completed in stages. Further, the rule adds, in paragraph (e)(3), that a unit can be added to a HAP contract under certain situations in which part of the building is reconfigured into additional units. This latter addition expands the type of units that may be added to a HAP contract.

To clarify the requirements for adding units that are occupied, this final rule adds paragraph (b)(5), which cross-references the requirements regarding occupied units found in paragraph (c) of this final rule. This final rule moves paragraph (c) of the proposed rule to paragraph (g) and adds new paragraph (c) to address the requirements for substituting or adding occupied units and provide PHAs with the flexibility to place occupied units on the HAP contract.

In alignment with the requirements under § 983.10, HUD adds paragraph (f) requiring that PHAs describe in their Administrative Plan under what circumstances they will add or substitute contract units.

Finally, this final rule adds a new paragraph (h) explaining that HUD may establish procedures via **Federal Register** notice for a PHA and owner to merge two or more HAP contracts or bifurcate a single HAP contract. Allowing merger would facilitate administrative efficiency, to avoid a PHA having to repeat the same administrative actions for multiple contracts with the owner of a single project. It also follows from the HOTMA provision allowing units to be added to a contract at any time. Under the prior policy, HUD is aware that there may be projects for which the PHA and owner were unable to add units to a HAP contract due to the three-year limitation and therefore selected the project again for a separate HAP contract. This change would enable the contracts to be aligned going forward. Allowing bifurcation would provide administrative relief in other scenarios, such as if there is cause to establish separate ownership or management of two or more portions of a project.

*§ 983.208 Condition of Contract Units*

HUD revises § 983.208(a)(3) to require that the PHA specify conditions under which it will require additional housing quality requirements in its Administrative Plan consistent with § 983.10. To ensure that housing is decent, safe, and sanitary, this final rule requires in paragraph (b)(1) that the PHA take enforcement action against owners who fail to maintain a dwelling unit in accordance with HQS. HUD revises paragraph (b)(2) to align with § 982.404, and to remove the unclear phrasing ''considered to be.'' This final rule also specifies in paragraph (b)(2)(i) that ''other inspector'' is a person who is authorized by the State or local government. The proposed rule cross-referenced to §§ 982.401(a)(5) and 982.401(o) to cover the timeframes for units in noncompliance with HQS; however, in this final rule HUD outlines the timeframes for noncompliant units in paragraphs (b)(2)(iii)(A) and (B) in place of the cross-references. HUD clarifies in paragraph (b)(3) that the HAP is not withheld or abated in cases where the PHA waives the owner's responsibility for repairs, and revises the paragraph to better align with HOTMA in terms of when the waiver may be applied, namely for an HQS deficiency that the PHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than damage resulting from ordinary use. HUD adds paragraphs (b)(4) and (5) to provide flexibility for PHAs to conduct substantial improvement in the case of an HQS deficiency caused by an extraordinary circumstance or to conduct development activity after HAP contract execution, respectively, and requires that the PHA withhold or abate HAP and remove or terminate HAP as long as the contract unit with deficiencies is occupied by an assisted family.

HUD also inserts a new paragraph (c) addressing family obligation. The addition of paragraph (c) reflects the contents of § 982.404, as § 982.404 is no longer applicable to PBVs in accordance with § 983.2 of this final rule. The changes in paragraph (c) outline how a family may be held responsible for a breach of the HQS, the family's required actions to cure the deficiency if the HQS breach is life-threatening, and the actions that the PHA must take in case of a breach of the HQS.

In revised paragraph (d), proposed paragraph (c), HUD replaces the use of the undefined term ''regular inspections'' with the specific inspections referred to, consistent with changes throughout this final rule. Consistent with § 983.10, revised paragraph (d) also requires that the PHA specify the conditions under which it will withhold HAP and abate HAP or terminate the contract for units other than the unit with HQS deficiencies in its Administrative Plan. Revised paragraph (d) also outlines the PHA's remedies when HQS deficiencies are identified in an inspection, excluding pre-selection, initial, or turnover inspections. In accordance with the 1937 Act as amended by HOTMA, this final rule revises paragraph (f) discussing the applicability of § 983.208 to HAP contracts. Per the statute, HUD determines that paragraph (f) applies to any dwelling unit for which a HAP contract is entered into or renewed after the effective date of this final rule, with ''renew'' under the statute meaning the earlier of agreement to extend or effective date of extension in the case of PBV.

*§ 983.210 Owner Certification*

To clarify the meaning of the certification in paragraph (a), given that compliance with HQS can include complying with requirements under part 983 to take specific actions in certain circumstances in which units do not fully meet HQS, HUD amends paragraph (a) to specify that the owner's compliance with HQS is subject to the requirements of part 983. To prevent a possible conflict with §§ 983.157 and 983.212, which allow the family to be temporarily housed while development activity or substantial improvement occurs, this final rule revises § 983.210(d) to specifically provide §§ 983.157(g)(6)(ii) and 983.212(a)(3)(ii) as an exception to the requirement that the unit be the family's only residence.

*§ 983.211 Removal of Unit From HAP Contract*

HUD moves from § 983.211(c) to paragraph (b) the requirement that reinstatement or substitution must be permissible under § 983.207. For clarification, HUD revises this requirement to reference § 983.207(a) and (b) specifically. This final rule also adds clarifying changes to paragraph (c) to require that the anniversary and expiration dates match all other units under the HAP contract. This clarification prevents the PHA and owner from matching the dates on the HAP contract for all other units with the dates for the reinstated or substituted units.

*§ 983.212 Substantial Improvement to Units Under a HAP Contract*

In this final rule, HUD moves the proposed § 983.157 to § 983.212 (as discussed further in the description of changes to § 983.157). HUD revises this section to address commenters' concerns over the timing of substantial improvement under a HAP contract. Specifically, HUD is breaking paragraph (a) into its components and revises paragraph (a) to outline the conditions under which the PHA may approve substantial improvement. The changes in paragraph (a)(1) set a reasonable expectation that the condition of housing placed under a PBV HAP contract should not need substantial improvement within the first two years of the HAP contract, barring the extraordinary circumstances subject to the exception in paragraph (a)(1)(i). To prevent tenants from being permanently displaced, paragraph (a)(1)(i) allows the PHA to approve the owner to undergo substantial improvement after a natural disaster or other ''extraordinary circumstances'' on a previously compliant unit and clarifies that ''extraordinary circumstances'' are unforeseen events that are not the fault of the owner. In paragraph (a)(1)(ii), HUD changes the relevant time period from five years to two years in response to public comment. Under paragraph (a)(2), HUD expands the description of the expected HQS deficiencies that must be reported to include the items at § 5.703(a)(2): components within the primary and secondary means of egress, common areas, and systems equipment. Further, HUD clarifies in paragraph (a)(2) the substantial improvement at issue must not include demolition and new construction of replacement units.

The changes in paragraph (a)(3) allow HUD to provide families with greater protection against being moved from the unit or project unnecessarily and against being required to remain in unsafe conditions. For paragraph (a)(3), this final rule adds several subsections to instruct the PHA and owner on what to do when families occupy units that will not comply with HQS during the substantial improvement. Paragraph (a)(3) also clarifies under what circumstances the family has to entirely vacate a unit during substantial improvement, which would only be when both in-place substantial improvement and temporary relocation cannot be achieved. HUD, in this final rule, explains whether families remain PBV participants or tenants under lease during re-housing and provides sufficient procedural information for a PHA and owner to carry out the moves. Paragraph (a)(3)(iii)(A) adds a requirement that a family that must be re-housed be offered an available vacant contract unit if there is one. In the case that the PHA issues the family a tenant-based voucher, paragraph (a)(3)(iii)(B) provides that the PHA must, either through voucher issuance based on family eligibility and willingness to request a voucher pursuant to § 983.261 or through removal of the unit from the HAP contract, issue the family its voucher to move. Finally, paragraph (a)(3)(iii)(C) requires that families that vacate the project be offered an opportunity to return. HUD notes that the leasing of units in a PBV project must comply with federal fair housing and related requirements, including ensuring that any designated accessible units are occupied by households who need the accessibility features, and that emergency transfers under VAWA are provided.

HUD clarifies that HAP and vacancy payments must be abated once the unit has any HQS deficiency during substantial improvement under paragraph (a)(4). This final rule adds paragraph (a)(5) to specify that vacant units are the units that may be temporarily removed from the contract and that failure to complete the substantial improvement as approved is a cause for a breach subject to § 983.206(c)(2). Paragraph (a)(5) also requires that the contract specify the terms of the PHA approval, to facilitate the PHA options for breach if the owner fails to comply.

This final rule amends the proposed paragraphs (b) and does not finalize the proposed paragraph (c) to conform to changes made across part 983 to separately characterize ''development activity'' and ''substantial improvement'' and remove descriptions of requirements applicable to substantial improvement from subpart D of part 983. Accordingly, paragraph (b) describes requirements that apply to substantial improvement. This final rule also adds a new paragraph (c) to require that for PHA-owned units an independent entity must make the

determinations otherwise made by the PHA in this section, to avoid a conflict.

*§ 983.251 How Participants Are Selected*

In this final rule, HUD clarifies in paragraph (a)(2) that the PHA determination of eligibility for a particular family must use information received and verified by the PHA. This is not a change to existing requirements, but the addition is necessary to ensure there is no confusion as a result of the explicit reference in § 983.2 that § 982.201(e) is inapplicable to the PBV program. This final rule also revises paragraphs (a)(2) and (b)(2) to clarify an existing requirement that the family cannot be zero-HAP at admission to the unit, and clarifies under paragraph (b)(1) that the eligibility of an in-place family is determined prior to attaching assistance to the unit (*i.e.,* executing a HAP contract or amending a HAP contract by adding or substituting units), not at the time the project or unit is initially selected to receive PBV assistance. This final rule clarifies paragraph (b)(3)(ii) regarding when an owner chooses to terminate or not to renew the tenant-based lease to remove language that may have implied the tenant-based voucher rules on termination or non-renewal function differently in the case of a unit proposed to be project-based. Consistent with § 983.10, this final rule also made changes to require that the PHA identify in the Administrative Plan details about how it structures the waiting list for the PBV program throughout paragraph (c). HUD also revises paragraph (c)(7)(x) for consistency and comprehensiveness with respect to the Department's nondiscrimination and equal opportunity regulations. Additionally, for organizational reasons, HUD relocates the requirement for PHAs to have some mechanism for referring to accessible PBV units a family that includes a person with a mobility or sensory impairment from § 983.252(c)(2) to § 983.251(c)(9).

To prevent the tenant from being subject to an impermissible requirement to accept services involuntarily, this final rule revises paragraph (d)(2) to state that the PHA must not require families to show they participate in their own equivalent services if they decline voluntary services. Consistent with § 983.10, in added paragraph (e)(2)(iii), HUD requires the PHA define ''good cause'' in the Administrative Plan, which, at a minimum, must include HQS deficiencies; a unit that is inaccessible or otherwise does not meet the disability-related needs of a household member with disabilities; circumstances beyond the family's control; and health or safety risk due to being a victim of domestic violence, dating violence, sexual assault, or stalking covered by 24 CFR part 5, subpart L. To benefit the tenants and based on public comments, HUD determines that PHAs cannot remove families from the waiting list when they reject units for any reason but must allow families to reject units for ''good cause'' without losing their place on the waiting list. This protects families from being penalized when a unit is not truly available to the family because the unit does not meet the family's needs.

*§ 983.252 PHA Information for Accepted Family*

HUD restructures proposed § 983.252(a), and moves the requirements previously at paragraph (c)(1) to paragraph (a)(2) so that the requirements that PHAs take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E, and provide information on the reasonable accommodation process, applies for all families, and not only where the family head or spouse is a person with a disability. HUD further revises proposed § 983.252 to add the requirement that the PHA include in the family information packet information about the family's right to move in a new paragraph (b)(5). HUD has also moved the requirement at paragraph (c)(2) regarding accessible PBV units to § 983.251(c)(9), as discussed in the previous section. HUD also adds a new paragraph (c) to clarify the requirement that the PHA and family sign the statement of family responsibility. In accordance with Title VI of the Civil Rights Act of 1964 and HUD's implementing regulation at 24 CFR part 1, this final rule clarifies in redesignated paragraph (e) that it is a requirement that PHAs take reasonable steps to ensure meaningful access by persons with limited English proficiency. PHA's may reference HUD's *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (72 FR 2732) for additional information about how to ensure meaningful access to persons with limited English proficiency.

*§ 983.254 Vacancies*

HUD aligns § 983.254(a)(1) with the new requirements of § 983.157, as described in the discussion of changes to that section. HUD also makes minor changes to paragraphs (a)(1)(i) and (ii) of this section to specify that PHAs should make every reasonable effort to make eligibility determinations and refer sufficient numbers of families to owners within thirty days.

*§ 983.255 Tenant Screening*

For consistency purposes and to align this section with § 983.10, HUD revises § 983.255(a)(2) and (c)(4) to require that the PHA's tenant screening policies are in accordance with the policies in the PHA's Administrative Plan.

*§ 983.257 Owner Termination of Tenancy and Eviction*

This final rule revises § 983.257 to add that the owner may terminate the tenancy in accordance with §§ 983.157(g)(6)(iii) and 983.212(a)(3)(iii).

*§ 983.260 Overcrowded, Under-Occupied, and Accessible Units*

After considering public comments, HUD creates additional flexibilities as requested, while ensuring units do not continue to remain overcrowded, underoccupied, or, in the case of accessible units, occupied by families that do not require accessibility features. Accordingly, in paragraph (a)(2)(ii), HUD provides PHAs with 60 days (an additional 30 days) to make an offer of continued housing assistance once a determination has been made that a family is occupying a wrong-size unit, or a unit with accessibility features that the family does not require and the unit is needed by a family that requires the accessibility features. HUD also reorganizes paragraph (b) and adds paragraphs (b)(2) to provide that the PHA must remove the wrong-size or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher if continued housing assistance under paragraph (b)(1) is unavailable. HUD determined this policy change was necessary to ensure the family living in a wrong-size or accessible unit would be able to obtain voucher assistance when no options under paragraph (b)(1) were available.

HUD revises paragraphs (c)(2)(i) and (ii) to clarify the requirements when the PHA's offer of assistance is project-based. HUD also adds paragraph (c)(2)(iii) to address the requirements when the PHA's offer of assistance is other comparable tenant-based rental assistance. In response to requests for additional flexibility, HUD creates under (c)(2)(i) and (c)(2)(iii) an opportunity for a family to request and a PHA to grant one extension not to exceed 90 days in circumstances where a family either declines project-based assistance or accepts or declines other

comparable tenant-based assistance in order to accommodate a family's efforts to locate affordable, safe, and geographically proximate replacement housing.

Finally, HUD adds paragraph (d) to state that if units are removed under this section they can be reinstated later. This final rule also revises paragraph (b)(1)(iv) to align with the revised definition for the term ''comparable tenant-based rental assistance'' in § 983.3.

*§ 983.261 Family Right To Move*

In response to public comments, HUD at this final rule reorganizes, adds headings to, and revises § 983.261. Paragraph (a) is revised to clarify that the family may terminate its lease at any time after one year of PBV assistance. To ensure PHAs properly manage voucher turnover, paragraph (b) requires that if the search term of a family that requested to move expires, the PHA must first issue a voucher to the next eligible family before issuing another voucher to the family that requested to move. This final rule moves the discussion in paragraphs (c)(1) and (2) of the rights of a family or a member of a family who has been the victim of domestic violence, dating violence, sexual assault, and stalking under the PBV program, to new paragraphs (e) through (g), and expands on these provisions. Paragraph (d) clarifies that if the family terminates its lease before one year of PBV assistance, the family relinquishes the opportunity for continued tenant-based assistance under this right to move section. Lastly, consistent with § 983.10, this final rule requires PHAs to have a policy on the family's right to move in the Administrative Plan in paragraph (b) and (c).

*§ 983.262 Occupancy of Units Under the Increased Program Cap and Project Cap Excepted Units*

This final rule makes overall changes to § 983.262, to align the PBV rules with the Fostering Stable Housing Opportunities (FSHO) notice,[14] and to specify the occupancy requirements under the 10 percent cap. Additionally, for ease of reading, this final rule moves and revises paragraph (f) to paragraph (b)(4) and distinguishes paragraphs (c) and (d), the requirements for excepted units and units under an increased program cap. This final rule makes clarifying changes to paragraph (b) by explaining the requirements applicable to both excepted units and units under an increased program cap. For clarity, this final rule amends paragraph (b)(4)(ii) to provide PHAs with discretion on whether to reinstate a unit from the PBV HAP contract. The changes in paragraph (c) explain the requirements solely for units under the increased program cap, which includes homeless family, veteran family, supportive housing for persons with disabilities or elderly persons, and units for Family Unification Program (FUP) youth. This final rule requires at paragraph (c)(3)(ii) that PHAs include policies on supportive housing for persons with disabilities or elderly persons in their Administrative Plan requirement in alignment with § 983.10. Revised paragraph (d) outlines the requirements solely for project cap excepted units.

Paragraph (e) of this final rule specifically outlines the requirements for units for FUP youth under the increased program cap and project cap exceptions. This revision is made for better readability and to distinguish FUP youth requirements from other categories of excepted units and units under an increased program cap.

*§ 983.301 Determining the Rent to Owner*

This final rule revises paragraphs (b)(1) and (c)(2)(i) to align with § 983.10. This final rule changes (f)(3) to align with the changes made to the exception payment standard regulation in § 982.503. Paragraph (f)(3) is also amended to clarify the criteria for whether an exception payment standard applies. Finally, HUD amends paragraph (f)(3) to clarify the purpose for which an exception payment standard applies to PBV projects, which is as a factor for determining rent to owner under paragraph (a)(2) or a factor for determining if the unit is a qualifying tax credit unit for purposes of setting the rent to owner under paragraph (c), as applicable.

HUD revises paragraph (f)(4) to provide HUD with the flexibility to develop a process to approve project-specific utility allowances. This final rule also adds paragraph (f)(5) to state that the PHA must use the applicable utility allowance schedule for the purpose of determining rent to owner and does not use a higher utility allowance from a reasonable accommodation for a person with a disability. This clarifies the existing requirement that a higher utility allowance as a reasonable accommodation is applied only to the particular family's tenant rent (or utility reimbursement) (see 24 CFR 983.353), rather than being used to determine the amount of the rent to owner per 24 CFR 983.301(b)(1) or (c)(2)(i). This final rule removes the proposed rule requirement in paragraph (g) that independent entities determine project-specific utility allowance, with the purpose that HUD will ensure sufficient oversight through the **Federal Register** process to approve project-specific utility allowances.

*§ 983.302 Redetermination of Rent to Owner*

This final rule revises paragraph (a)(2) to state that the PHA Administrative Plan must specify any advance notice the owner must give the PHA to request a redetermination of rent and the form of such request. This final rule revises paragraph (b)(2) to remove the term ''maximum rent,'' which was undefined, and state specifically how to calculate the maximum adjustment by OCAF. Further, this final rule moves information that was in paragraph (b)(2) in the proposed rule to new paragraphs (b)(3), (b)(4), and (b)(5) with simplified language for readability. HUD amends paragraph (b)(6) to conform to applicable HQS provisions of §§ 983.157 and 983.212.

HUD also clarifies when the rent to owner must be decreased in the case of adjustment by OCAF in revised paragraph (c)(1), to include when there is a decrease in the fair market rent, tax credit rent, or reasonable rent, as applicable, that requires a decrease to the rent to owner. In response to public comments on the proposed changes to rent floors, HUD determined that PHAs should have discretion whether to elect at any time, within the HAP contract, to not reduce rents below the initial rent to owner, as reflected in revised paragraph (c)(2). This revision reflects HUD's opinion that PHAs are in the best position to balance local considerations in making such a determination. To accomplish this change, HUD removed from paragraph (c)(2) the limitation on establishing a rent floor, to account for circumstances where the rent floor may need to be established after rents have fallen beneath the initial rent to owner.

*§ 983.303 Reasonable Rent*

HUD amends paragraph (b) to add two new situations in which rent reasonableness must be redetermined, which are when a unit is added to the contract and when development activity is completed and accepted for a unit subject to the new option in § 983.157 of this final rule (described in greater detail in the discussion of § 983.157 above). This final rule adds paragraph (c)(3) to explain how to calculate rent reasonableness, which must be based on actual and documentable conditions

[14] *See* 87 FR 3570 (Jan. 24, 2022).

and not prospective information. HUD also deletes in paragraph (f)(2) the phrase ''where the project is located,'' as this language modified ''the HUD field office'' which has been removed.

*§ 983.352 Vacancy Payment*

This final rule aligns this section with § 983.10 by clarifying that the Administrative Plan must contain the PHA policy on the conditions which it will provide for vacancy payments in a HAP contract, the duration and amount of any vacancy payments it will make to an owner, and the required form and manner of requests for vacancy payments.

*§ 983.353 Tenant Rent; Payment to Owner*

This final rule revises paragraph (d)(2) to align it with § 983.10, requiring that the PHA describe its policies on paying the utility reimbursement in the Administrative Plan.

*§ 985.3 Indicators, HUD Verification Methods and Ratings*

This final rule revises paragraphs (i)(1), (i)(3)(i), and (i)(3)(ii) to align them with § 982.503. Further, this final rule clarifies paragraph (l)(1) to state that the initial unit inspection indicator includes both initial and turnover inspections for the PBV program. The purpose of this revision is to capture every time a family moves in and not just capture when a family moves in before the HAP contract. This final rule also revises the citation in paragraph (m)(1) from § 982.405(a) to §§ 982.405 and 983.103(e) to reflect changes made to those sections in this final rule.

This final rule also revises paragraph (c)(3)(i)(A) to reflect changes made to self-certification of assets under 88 FR 9600 (Feb. 14, 2023), which implemented HOTMA sections 102, 103, and 104. A revision has been made to the introductory text of this regulation to reflect that the Federal award expenditure threshold is established by 2 CFR subpart F and has changed from $300,000 to $750,000. The revision reflects the regulatory citation for audit thresholds to ensure that § 985.3 is always aligned with Federal audit requirements.

This final rule revises paragraph (p)(1) and (3)(i)(B) to reflect the renumbering of § 982.503(e) to (f).

**General Technical Changes**

Throughout parts 5, 50, 92, 93, 982 and 983, HUD moved, corrected, and removed outdated citations and revised headers for clarity purposes. This final rule also revises terminology throughout this final rule, including replacing all references to ''biennial inspection'' with ''periodic inspection;'' ''tenant selection plan'' with ''owner waiting list;'' and ''defects'' with ''deficiencies.'' This final rule also replaces references to ''tenant's rent'' with ''total tenant payment'' and replaces references to ''rent to owner'' with ''gross rent.'' This final rule removes all references to the Project-based certification (PBC) program as it is no longer in existence. HUD also redesignated paragraphs for readability in §§ 982.54, 982.406, 983.53, 983.54, 983.59, 983.153, 983.204, 983.207, 983.211, 983.252 and 983.260. In addition, HUD moved the definition of the term ''Request for Release of Funds and Certification'' from § 983.3 to § 983.56(d)(2). HUD also amended §§ 985.1 and 985.3 to incorporate the PBV program in SEMAP and to align with regulatory changes in § 982.503 which permits additional flexibilities for PHAs inspections and the NSPIRE final rule.

HUD also makes changes throughout this final rule to correspond with the changes described above adding an option to complete rehabilitation after HAP contract execution in § 983.157, moving proposed § 983.157 to § 983.212 of this final rule, and changing the term ''development activity'' to ''substantial improvement'' for a portion of the work described as ''development activity'' in the proposed rule. HUD adds cross-references to § 983.157 in this final rule, and brief descriptions of conforming changes, in appropriate sections of part 983. Also, HUD removes citations to § 983.157 that appeared in the proposed rule or changes them to instead reference § 983.212 throughout this final rule. HUD changes ''development activity'' to ''substantial improvement'' where appropriate throughout this final rule. Finally, HUD removes references to activities that constitute substantial improvements from subpart D of part 983 of this final rule where appropriate and, accordingly, removes references to provisions of subpart D from §§ 983.207 and 983.212 where appropriate.

HUD is also revising the definition of ''household'' at 24 CFR 5.100, consistent with HUD's rule implementing HOTMA at 88 FR 9600 (Feb. 14, 2023), to include foster children and foster adults. This is a technical change consistent with the definitions of ''foster children'' and ''foster adults'' present in 24 CFR 5.100. For more information, see HUD's discussion of foster children and adults at 88 FR 9600, 9602 (Feb. 14, 2023).

Finally, some technical changes throughout the proposed rule were either made by the NSPIRE final rule or rendered moot by the NSPIRE final rule. For example, HUD proposed to amend § 985.1 to update a reference to ''project-based component (PBC).'' This change was made in NSPIRE, and therefore not made here.

**IV. Effective and Compliance Dates**

*Effective Dates*

Almost all changes in this final rule are effective thirty days after the publication of this rule. However, HUD is delaying the effective date for §§ 982.451(c), 983.154(h), 983,154(g), 983,157, and 983.204(e) while HUD completes and publishes the PHA-owned certification form and HAP contract rider that are necessary for PHAs to implement these changes. HUD will publish a subsequent publication establishing an effective date for these changes, once the form and rider are ready for use.

*Compliance Dates*

Compliance with this final rule is required once the rule becomes effective, with some exceptions.

Many changes require updates to PHAs' Administrative Plans. HUD recommends that PHAs update their Administrative Plans at their earliest convenience. However, to aid in providing a smooth transition, PHAs are not required to update their Administrative Plans in response to this rule until 365 days after the effective date of this rule. HUD notes that PHAs wishing to take advantage of many of the changes in this rule are required to update their Administrative Plan to incorporate those changes.

Other sections have delayed compliance dates to provide PHAs with adequate time to update their forms, procedures, and any other written materials that reflect new requirements in accordance with this rule, and to provide HUD with time to provide additional resources advising PHAs. Also of note, §§ 983.57 and 983.155(b) will require some PHAs to either amend their independent entity contracts or select a new independent entity, and HUD is therefore giving PHAs one year from the effective date to make those changes.

**V. Public Comments**

HUD received 44 public comments from a wide range of commenters: individuals; PHAs; public housing and tenant interest groups; and legal services organizations. The public comments and responses to the substantive comments are found below.

**1. Definitions (§ 982.4)**

*Definition of Request for Tenancy Approval (RFTA)*

One commenter stated that the definition of RFTA seems to imply a requirement that the RFTA be submitted by the voucher holder and suggested the definition be amended to clarify that either the family, or the owner on behalf of the family, may submit the form.

*HUD Response:* In this final rule, HUD has amended the definition of RFTA to clarify that the form can be submitted by the family, or on behalf of the family to the PHA.

*Definition of Tenant-Paid Utility*

A commenter suggested that HUD include the definition of ''utility'' currently found in guidance to the regulation because the definition is a critical part of the program.

*HUD Response:* The definition of tenant-paid utility has been added to the definitions section at § 982.4 and this definition is now also referenced in the project-based voucher definition of tenant-paid utility at § 983.3. The new definition in § 982.4 clarifies that tenant-paid utilities are those services and utilities that are not included in the rent. HUD modified the definition from the proposed rule to remove the definition of which utilities may be considered as tenant-paid utilities since this is covered in § 982.517.

*Definition of PHA-Owned Units*

Commenters supported the proposed definition of a PHA-owned unit, which matches the statutory definition offered by HOTMA. These commenters stated this was clear and did not need expansion and supported tracking the statutory definition and conforming definitions across HCV and PBV regulations, notices, and guidance.

A commenter recommended that for a unit to be PHA-owned that HUD not rely on a bright-line, percentage of ownership test to determine control when a PHA owns more than 50 percent of the managing member or general partner, and HUD should not find a unit to be PHA-owned when a PHA controls less than 50 percent of a managing member or general partner interest. Another commenter supported excluding units in buildings owned by entities in which either a PHA is in the ownership structure, and/or the entity is subject to a ground lease by a PHA. A commenter recommended the definition of ''owned by a public housing agency'' should allow the statutory text to stand on its own, so that only units located in a project ''owned by the PHA, by an entity wholly controlled by the PHA, or by a limited liability company (''LLC'') or limited partnership (''LP'') where the PHA holds a controlling interest'' will be considered ''owned by a public housing agency.'' The same commenter opined that should HUD wish to clarify the control and other factors it will evaluate when determining whether a unit will be considered PHA-owned, HUD can do so through notice or other non-binding guidance. This commenter further stated that the definition of ''controlling interest'' conflates control and ownership contrary to Congressional intent, explaining that percentage of ownership does not guarantee control over the owner entity and that HUD should confirm whether the PHA exercises functional day-to-day control over the owner entity.

*HUD Response:* HUD appreciates there are many different preferences regarding the level of ownership or control that rises to the level of PHA-owned. In the interest of consistency, HUD agrees with the commenters that supported a definition that follows the statutory definition, and therefore declines to accept the suggestions that HUD avoid a bright-line test or exclude units in buildings owned by entities in which either a PHA is in the ownership structure, and/or the entity is subject to a ground lease by a PHA. Additionally, HUD believes that providing a distinction in the regulation of what constitutes a controlling interest is important to clarify the nuances in the statutory definition of PHA-owned units, and thus does not accept the suggestion that any clarifications beyond the statute should only be made through non-binding guidance. HUD disagrees that its definition of the term controlling interest is contrary to Congressional intent. The common definition of ''controlling interest'' recognizes a majority ownership interest that serves as the basis for control; HUD's definition reflects the most basic and recognized meaning of the term. Therefore, this final rule maintains the proposed rule language without change.

*Definition of Independent Entity*

A commenter supported the modified definition of independent entity in the proposed rule because it would provide relief to PHAs and maintain a level of scrutiny and prevent the appearance of self-dealing. Another commenter doubted whether there is any circumstance under which a PHA and an independent entity should be connected financially, in the interest of complete fairness and impartiality under which an independent entity should be making decisions.

One commenter suggested that the proposed rule would increase the shortage of vendors for PHAs, especially located in smaller areas, if every vendor were disqualified based on prior contracts with the PHA for services performed on non-PHA-owned units. The commenter viewed HUD's current procedures in tandem with the PHAs' inability to exercise control over the independent entity, as sufficient to ensure independence.

The same commenter recommended that HUD revise the definition of independent entity because it is unclear what it means for an independent entity to ''be connected to'' a PHA, and the definition would prohibit a PHA from using a company it already contracts with as an independent entity. Another commenter stated the phrase ''or in any other manner that could cause the PHA to improperly influence the independent entity'' is vague and subjective, potentially leading to confusion, disputes, and conflict, and should be deleted.

For clarity, a commenter suggested HUD revise the definition as follows: ''HUD-approved independent entities and PHAs cannot have a legal, financial (except regarding compensation for services performed for the PHA), or other connection that could cause either party to be improperly influenced by the other.'' The same commenter suggested that this final rule specify the meaning of ''connected to'' because the current meaning could prohibit a PHA from using an independent entity it currently contracts with, even when these vendor contracts are procured at arm's length.

Another commenter suggested HUD allow PHAs that may have an allowable financial relationship with an independent entity to continue to use that independent entity if there is no chance that the PHA will ''improperly influence'' the independent entity.

*HUD Response:* HUD appreciates the comments related to the challenges of identifying independent entities in rural areas, as well as the need to ensure impartiality. HUD revises the proposed definition in an attempt to balance these competing interests and ensure that HUD-approved independent entities are impartial and autonomous. HUD believes it is important to provide a regulatory definition of the term independent entity, and thus declines the request that the definition is consistent with current requirements, which provide that the PHA cannot perform any function that would present a clear conflict (*e.g.,* conducting inspections and rent setting) for units it owns. In this final rule, HUD explains when the unit of general local

government meets the definition of an independent entity without requiring HUD approval. HUD believes keeping this option in this final rule will reduce administrative burden and reporting requirements. While HUD disagrees that there are financial connections where there is no chance that the PHA will ''improperly influence'' the independent entity, HUD further clarifies that for HUD-approved independent entities, a financial connection would not include compensation for services performed for PHA-owned units. HUD believes it is necessary to maintain language regarding impartiality of HUD-approved independent entities, which defines the types of relationships (*e.g.,* financial connections) that could interfere with the entity's exercise of independent judgment in carrying out responsibilities with respect to PHA-owned units.

**2. Administrative Plan (§ 982.54)**

*Objections Generally*

A commenter stated that HUD should not add items to the Administrative Plan that are not necessary for the daily and core operations of the PHA. Another comment stated that several of the proposed additions would require frequent and burdensome changes for otherwise insignificant policy changes.

*HUD Response:* HUD disagrees that the requirements should not be added to the regulations. HOTMA offers significant flexibilities and HUD proposes to offer additional flexibilities to PHAs to establish discretionary policies through this rule. Therefore, it is critical that discretionary policies be applied consistently and that such policies are clearly and transparently published for the benefit of participant families, owners, and the general public.

*Inclusion of Tenant Selection Plan (TSP)*

Another commenter suggested that the requirement that a TSP be included in the Administrative Plan must be mentioned in § 982.54.

*HUD Response:* In finalizing the rule, HUD replaced all references of the ''tenant selection plan'' with ''owner waiting list policy.''

*Question 2: Where could HUD provide greater discretion to PHAs to support their efforts to operate their programs effectively?*

A commenter stated that all PHAs should be allowed to be Moving to Work (MTW) agencies to decrease regulatory burdens and provide additional discretion for PHAs to control their local market. This commenter also recommended that PHAs that have Affordable Housing Accreditation Board (AHAB) accreditation and are high performing under SEMAP and PHAS should be rewarded with more discretion because they have shown their ability to properly operate their programs.

*HUD Response:* HUD appreciates the comments requesting that PHAs should be afforded additional discretion to reduce regulatory burdens and notes that HOTMA and HUD, in its implementation, has made significant modifications and clarifications intended to reduce the burden on PHAs where possible. HUD does not have the statutory authority to allow all PHAs to be MTW agencies as suggested by the commenter.

**3. Information When Family Is Selected (§ 982.301)**

*Disability-Related Obligations in the Oral Briefing*

Commenters supported HUD's requirements wherein PHAs must provide families that include an individual with a disability a list of accessible units known to the PHA and assistance in locating an accessible unit. PHAs are already required to provide this information in the information packet, and as required in compliance with HUD's Section 504 requirements. One commenter suggested that PHAs be required to collaborate with local organizations that can provide housing search assistance to tenants with specific accommodation needs. Another commenter suggested that HUD require PHAs to keep track of whether tenants currently in accessible units require the accessible design features and use a lease addendum stating that the family may be required to move if they do not require the accessible design features. The same commenter suggested that HUD provide guidance to PHAs to proactively identify ways to make units accessible, including through new construction or other substantial rehabilitation.

*HUD Response:* The HCV program allows families to choose any eligible unit in the rental market. In the tenant-based voucher context, an HCV family leaving a rental unit due to not needing its features does not mean that unit is then leased to another HCV family. In other contexts, such as public housing and project-based voucher housing, the owner or manager may require the applicant to agree to move to a non-accessible unit and may incorporate this agreement into the lease, in accordance with HUD's Section 504 regulations. HUD appreciates the comments and recommendations to provide guidance to PHAs on ways to proactively identify units that meet a household's disability-related needs and ways to make units accessible and will consider these ideas in future guidance.

*Exception Payment Standards*

A commenter stated that HUD should include written and oral briefings on exception payment standards as a reasonable accommodation, and not solely include subsidy standards as required by regulations. The commenter suggested that PHAs be required to inform families of the availability of an exception payment standard, and particularly for when a more expensive new construction unit is needed as an accommodation for a family member's disability. Alternatively, another commenter suggested that the regulation should not detail that there is a reasonable accommodation possible for subsidy standards because reasonable accommodations are available for all PHA policies.

*HUD Response:* HUD agrees with the commenters that PHAs must make reasonable accommodations in rules, policies, practices, services, and procedures to ensure persons with a disability have equal opportunity to participate fully in all the PHA's programs, privileges, benefits, and services. Therefore, the voucher briefing must include information on the PHA's reasonable accommodation policies and procedures. In addition, the PHA may not know or have reason to know if the family or families attending the oral briefing includes a person with disabilities. Similarly, a family member who is not disabled may subsequently become disabled, so it is important that all families receive information on the reasonable accommodation process. Consequently, HUD is revising § 982.301(a)(3) to require that information on the reasonable accommodation process is provided at all oral briefings and not limited only to briefings where the PHA knows that a family in attendance includes a person with disabilities. While HUD does not require in this final rule that the reasonable accommodation exception payment standards must be covered in the oral briefing, HUD is requiring that an explanation of reasonable accommodation exception payment standards must be included in the briefing packet. HUD believes providing written guidance in the information packet will better address the commenter's concerns as the family will have access to guidance on this subject throughout their housing search.

*Briefing Method*

A commenter recommended that the regulation for the briefing packet should outline the most critical information for families when they are provided their initial voucher, because excessive amounts of information can be overwhelming for families. The commenter also recommended that PHAs should have the discretion to determine which method of communication, including oral, print, and electronic communications, is proper for the briefing packet, and the regulation should explicitly state that the briefing can be provided in a manner that is not oral, according to the PHA's discretion, while acknowledging that accessibility and interaction between staff and families are required.

Another commenter recommended referencing § 982.301(a), the right to meaningful language access for families whose members are limited English proficient, and how to request and access meaningful language assistance from the PHA. The commenter further stated that in § 982.301(b)(10), HUD should reference how tenants can request language assistance, whether via written translation of documents or oral interpretation, for the PHA; HUD should require that the PHA identify staff members who will coordinate the PHA's language access policies; and the tenant briefing should include translation and oral interpretation for individuals who are limited English proficient in § 982.301(c).

*HUD Response:* HUD regulations require that the briefing packet contain specific information that is important for families when they are provided with their initial voucher. HUD does not agree that the briefing packet should categorize which pieces of information are more important than others, as all information is required and important for voucher families. HUD does not agree that the regulation should allow for other types of briefings and believes requiring an oral briefing ensures that all families fully understand how the program works and have the opportunity to ask questions and discuss information presented. HUD notes that new paragraph (c) in § 982.310 already addresses providing information for persons with limited English proficiency. HUD has also addressed access to translation in PIH Notice 2020–32 which provides for alternative briefing methods, as well as how to ensure meaningful access for limited English proficient speakers and believes no additional changes to § 982.301 are warranted.

**4. Approval of Assisted Tenancy (§ 982.305)**

*60-Day HAP Contract Execution in § 982.305(c)(4)*

A commenter disagreed with HUD's proposal to require a 60-day period to execute a HAP contract and a lease term and noted that requiring PHAs to get permission from HUD to execute a HAP contract in cases exceeding the 60-day period is unnecessary because it is not in the interest of the parties to unnecessarily delay the process. As an alternative, the commenter suggested increasing the contract execution time from 60 days to 90 days to eliminate the need for any additional action from the PHA or HUD and require PHAs to notify HUD when the PHA goes beyond the 60 days, so that HUD can track the prevalence of the extensions requests and re-examine this policy in the future while avoiding administratively burdening PHAs and landlords.

Another commenter did not support a maximum 60-day timeframe between lease effective date and the date of HAP contract execution. The commenter opined that many HCVs are lease-in-place vouchers in rent stabilized units, so PHAs cannot request that the owner sign a new lease at the start of the subsidy without violating local rent laws.

*HUD Response:* HUD appreciates the comments and clarifies that the requirement to execute a HAP contract no later than 60 days from the beginning of a lease term is already a requirement under current regulations at § 982.305(c)(4) and not newly proposed. HUD also understands the concerns of commenters around extenuating circumstances and believes that the proposed change to allow a PHA to request an extension of HUD sufficiently addresses those concerns. Therefore, HUD will finalize § 982.305(c)(4) as proposed.

**5. Eligible Housing (§ 982.352)—Independent Entity Functions and Compensation**

*Questions 5 and 6: Functions, Other Than Those Identified in the Proposed Rule, That an Independent Entity Should Perform in the Case of PHA-Owned Units*

Functions of Independent Entities

Commenters opposed adding duties to independent entities. One commenter stated the functions identified in the proposed rule are the same as the current regulation, and that no other functions should be authorized to an independent entity. Another commenter stated that HUD should not require independent entities to perform other functions beyond those proposed because doing so would increase the costs as well as decrease funding availability for other program functions. One commenter stated that the independent entity requirements should be re-examined so that PHAs are not burdened by the oversight of such entities, and that PHAs should be entrusted to carry out the activities, such as ensuring compliance with selection process, inspections and rent setting—just as PHAs are under the public housing program. The commenter suggested having the PHAs carry out these duties with proper documentation and subject to review through the required annual independent audit.

Another commenter disapproved of HUD requiring an independent entity to conduct duties that the PHA can do itself, such as approve contract renewals, conduct inspections, and conduct rent reasonableness tests. The commenter further emphasized the burden of using independent entities for activities, such as performing inspections because there is a shortage of vendors trained in UPCS–V protocol, and many PHAs conduct rent reasonableness tests through third-party software, making the need for independent entities obsolete. The commenter recommended that HUD require an independent entity to conduct inspections only for special inspections or compliance to lessen the PHA's burden. While another commenter noted that HUD's proposed list of activities to be performed by an independent entity is too long, suggesting HUD reconsider the requirement that an independent entity receive evidence that the PHA is following regulations during the development activity or rehabilitation. This commenter noted that there are already several layers of review at local and Federal levels, and that, in the case of mixed-finance, HUD may have already reviewed the transaction.

A commenter further suggested that independent entities not be required to review awards of Low-Income Housing Tax Credits (LIHTC) or HOME Investment Partnership Program (HOME) funds, as well as PHA-owned project selections and stated that HUD should defer to the PHA to determine when revitalization of a former public housing site is needed. Additionally, the commenter objected to the requirement that independent entities (rather than PHAs) must determine any rent adjustments by an OCAF as part of their rent calculation responsibilities for any PHA-owned units.

*HUD Response:* HUD agrees that no additional duties need to be added to the independent entity functions but for the addition of one function under § 983.57 requiring the independent entity to approve substantial improvement on units under a HAP contract in accordance with § 983.212 (see the discussion of § 983.57 later in this preamble). HUD has consistently maintained that PHAs cannot appropriately perform any function that would present a clear conflict for units they own. 42 U.S.C. 1437f(o)(11) reflects this view by requiring that the unit of general local government or a HUD-approved independent entity perform inspections and rent determinations. In addition, while the PHA is generally responsible for selecting PBV projects in accordance with § 983.51, including developing the procedures for submission and selection of PBV proposals, HUD believes that, to ensure fairness and impartiality, it is necessary for an independent entity or the HUD field office to review the selection process the PHA undertook and determine that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA Administrative Plan. Finally, as previously noted, PHAs are statutorily prohibited from determining rents for PHA-owned units; calculating the amount of the reasonable rent and any rent adjustments by an OCAF are integral parts of the process. Accordingly, HUD maintains the requirement that the independent entity must calculate any rent adjustments by an OCAF for PHA-owned units.

Independent Entity Compensation

A commenter suggested that HUD expressly permit a PHA to seek reimbursement of independent entity expenses from project owners as operating costs.

*HUD Response:* Independent entity functions are not a project owner's responsibility. Tasks performed by the independent entity are administrative functions that the PHA would otherwise be performing if the units did not meet the definition of PHA-owned. PHAs may therefore compensate the independent entity from PHA administrative fees (including fees credited to the administrative fee reserve).

Support for PHAs Keeping Documents

Commenters supported PHAs keeping rent reasonableness and inspection documents and providing copies to the field office only upon request. A commenter noted that this is not required for non-PHA-owned units, and the field offices lack capacity to review these reports.

*HUD Response:* HUD retains the language proposed at § 982.352(b)(1)(v)(A) requiring rent reasonableness and HQS information be communicated to the family and PHA, but not submitted to HUD unless upon request. HUD agrees that this framework balances HUD's interest in proper oversight and PHAs' administrative burden.

**6. Establishment of Life-Threatening Conditions (§ 982.401(o))**

Some commenters approved of the list of Life-Threatening Conditions (LTCs). Other commenters suggested that the list should include other items such as mold, due to its harmful impact on individuals with respiratory and immune deficiencies; non-functioning locks; roaches; asbestos; radon; rat infestations; non-functioning heating or hot water systems; properties determined uninhabitable by a city agency; inability of heating system to maintain a minimum of 55 degrees Fahrenheit during cold season; utilities not in service; an absence of a functioning toilet; and missing exterior doors or windows. Another commenter stated that a missing lightbulb should not be an LTC.

One commenter suggested condensing and summarizing the list, as a high level of detail could lead to errors in inspections when multiple criteria must be met to be considered an LTC. Another commenter supported HOTMA's streamlining changes but stated that it is unwarranted to find minor HQS violations as a safety hazard or a reason to terminate HAP assistance. A separate commenter recommended that HUD immediately update the HQS inspector checklists to accurately reflect LTCs. Another commenter recommended that HUD only require the list for initial inspection and not for regularly scheduled annual or biennial inspections.

One commenter stated that HUD should clarify that a unit without a carbon monoxide (CO) detector should not be considered an LTC if there is no CO source in the unit. Another commenter urged HUD not to add CO detectors to HQS through HOTMA and instead ensure consistency across HUD programs by implementing statutory CO requirements through standalone rulemaking. One commenter suggested that voucher applicants and those moving with continued assistance should receive notice of proximity to a Superfund site or contaminated sites on the National Priorities List (NPL) at application, lease signing, and at recertification. This commenter also recommended that HUD expand its Memorandum of Understanding (MOU) with the EPA, which is currently limited to Project-Based Rental Assistance (PBRA) and public housing, to all forms of HUD assistance, and suggested HUD and EPA map all assisted projects and their proximity to sites on the NPL.

Commenters also suggested that PHAs should be allowed to add other conditions into their Administrative Plan. A commenter suggested that HUD allow PHAs to continue using their own pre-existing definitions as a replacement for HUD's NLT definitions. A commenter urged HUD not to require PHAs to adopt the NLT provisions as a prerequisite for adopting alternate inspections. One commenter stated that HUD should only require PHAs to outline deviations from the definition of ''life-threatening conditions'' in the Administrative Plan instead of repeating HUD's regulations. Another commenter suggested HUD waive the on-site inspection requirement when PHAs use alternative procedures to correct NLT deficiencies.

One commenter suggested that HUD undertake a thorough and public examination with significant stakeholder outreach and participation before changing to the proposed list of LTCs, which is based on UPCS–V and imposes a higher standard than is currently required.

Commenters opposed the expansion and addition of new HQS fail items being categorized as life-threatening because it would limit the PHAs' ability to consider local conditions and hinder applicants from quickly accessing their units.

*HUD Response:* HUD has decided not to finalize the revisions in the proposed rule to § 982.401 through the HOTMA final rule. All comments made through this HOTMA rulemaking process were taken into consideration in the drafting of the NSPIRE Standards Notice. Commenters had another opportunity to provide feedback through that notice, published to the **Federal Register** (87 FR 36426) on June 17, 2022. All current LTCs are defined in the final NSPIRE Standards Notice (88 FR 40832) published June 22, 2023. All future updates to the LTC list will also be subject to notice and comment in the **Federal Register**.

**7. Enforcement of HQS (§§ 982.404, 983.208)**

*Usage Suggestions for Abated Funds*

Commenters suggested various usages for abated funds, such as security

deposits, portion of rent, costs for families moving due to the termination, application fees, and other mandatory expenses.

A commenter suggested relocation assistance for affected tenants should be mandatory, using funds from the abated PBV HAP or TPVs. Commenters also stated that the proposed rule is unclear as to whether the security deposits and moving costs are the only eligible expenses or if the PHA can determine additional expenses and suggested that the PHAs should determine what comprises eligible assistance expenses and refer to the URA cost schedule for moving costs.

*HUD Response:* HUD appreciates these comments on the use of TPVs and abated funds. With respect to TPVs, these vouchers are not provided in connection with PBV contract terminations or abatement of assistance. In addition, HUD cannot mandate the use of abated funds for relocation assistance to families. The statute does not require the PHA to use abated funds for relocation assistance; instead, it provides the PHA with discretion to use funds for this purpose. Specifically, section 8(G)(vii)(III) of the 1937 Act states: ''The [PHA] may provide assistance to the family in finding a new residence, including use of up to two months of any assistance amounts withheld or abated . . . for costs directly associated with relocation of the family to a new residence, which shall include security deposits as necessary and may include reimbursements for reasonable moving expenses incurred by the household, as established by the Secretary.''

Consistent with the statutory language, and in response to the comments regarding the eligible expenses that may be covered, HUD has provided additional language regarding the permitted uses of abated funds for relocating tenants. Specifically, HUD has added that PHAs may assist families in finding a new unit, including using up to two months of the withheld and abated assistance payments for costs directly associated with relocating to a new unit, including security deposits, temporary housing costs, or other reasonable moving costs as determined by the PHA based on their locality. HUD has further clarified that if the PHA is using withheld or abated assistance payments to assist with the family's relocation costs, the PHA must provide security deposit assistance as necessary, as required by the statute.

*Protection of Tenants*

Many commenters suggested going further to protect tenants from evictions and subsidy terminations in the event their unit fails an HQS inspection. Commenters warned that the proposed rule would allow PHAs to abate and terminate an entire HAP contract if a single unit fails HQS and tenants may face higher rent under HCV rules or face an owner that evicts them despite the regulatory language.

Commenters stated that withholding HAP during the cure period for HQS violations may create an incentive to evict tenants. Commenters recommended HUD require that tenants cannot be held liable for amounts of HAP withheld or abated, such abatement is not grounds for eviction, and tenants cannot be held liable for their own portion of the rent during abatement. A commenter noted that, in some cases, the PHA withholds HAP for HQS violations that are not an immediate threat to health and safety and do not warrant a tenant to withhold rent under State law and HUD should clearly state that when the PHA is relieved of paying back rent, the tenant is as well, despite any State law discrepancies regardless of State law unless the State law provides stronger tenant protections. A commenter further expressed that when HAP is abated, the tenants should be notified.

Commenters recommended that HUD explicitly state that if a PHA terminates a PBV HAP contract based on a breach of conditions requirements, any of the units that continue to meet or have been brought into compliance with HQS requirements should be allowed to continue under the program. Another commenter recommended that HUD should specify in § 982.404(d)(2)(ii) that the family's assistance may only be terminated in accordance with § 982.555 if a family fails to move within the allotted time. A commenter also suggested that HUD clarify § 982.404(e)(1) to include that a PHA may extend the 90 days for families as needed based on individual circumstances, without HUD approval, and state that for relocation protections, public housing includes properties either pre- or post-conversion under RAD, section 18, or other provision of law, not to include section 9 public housing.

One commenter requested further clarity on whether the requirement for families to be provided at least 90 days to find a new unit after the HAP contract is terminated, refers to 90 calendar days or 90 ''tolled'' days of voucher time, which is required under the Family Move regulations.

A commenter also stated that a PHA must provide a preference to families who relocated due to HQS deficiencies. This commenter sought clarification from HUD on whether the preference for the public housing waiting list would take precedence over other existing public housing preferences. Another commenter stated that HUD's proposed language in § 982.404(e)(2) does not consider that PHAs need to manage limited vacancies to best serve the residents already within the public housing program, or for the many applicants on that program's waiting list. This commenter recommended that HUD modify the proposed language within § 982.404(e)(2) to clarify that HCV family participants transfer into public housing units shall not take preference over the PHA's needs for a Section 504, VAWA, or other emergency need.

One commenter stated that HUD providing a public housing preference for families affected by HCV abatements unable to find a new voucher unit would potentially lead to decreased mobility for HCV participants. The commenter suggested that it would be advantageous to allow payments up to 120 percent of fair market rents for such families, which would enable them to access higher rental markets within the spectrum of ZIP codes served by the PHA. This commenter agreed with the HOTMA language, permitting the PHA to use up to two months of the assistance payments that were withheld or abated under the family's terminated HAP contract for cost directly associated with the relocation of the family because these provisions would provide greater mobility to HCV families.

*HUD Response:* The language giving PHAs the option to withhold HAP during the cure period is required under HOTMA. In response to the comment regarding procedures under § 982.555, HUD cannot override State and local law regarding enforcement of the lease agreement. HUD has further clarified that tenants relocated due to an HQS deficiency must be given a selection preference by the PHA for public housing, where applicable. HUD has clarified that the PHA must issue the family a voucher to move at least 30 days prior to termination of the HAP contract.

HUD has clarified that the requirement for families to be provided at least 90 days to find a new unit after the HAP contract is terminated, refers to 90 calendar days.

HUD appreciates the suggestion to allow payment standards up to 120 percent of FMR. This change is not necessary as PHAs may currently apply for 120 percent fair market rents and/or SAFMRs under 982.503, which provides for expanded access to rental markets

for all families. FMRs are established for entire geographies, and not on a case-by-case basis, except in the case of a reasonable accommodation exception payment standard (RA EPS) for people with disabilities.

HUD appreciates the recommendation that HCV participant transfers should not take preference over Section 504, VAWA, or other emergency transfers. HUD agrees and finds that 24 CFR 982.404(e)(2) as drafted in this final rule is sufficient and notes that Section 504 transfers must occur under the requirements of 24 CFR part 8, including 8.28, and VAWA emergency transfers must occur in accordance with HUD's VAWA regulations at 24 CFR part 5, subpart L, and program regulations.

*Withholding HAP Harms Landlords*

A commenter warned that withholding HAP during the 30-day correction period would hurt smaller landlords and potentially discourage them from future participation.

*HUD Response:* This language cannot be changed because the option for PHAs to withhold HAP during the cure period is required under HOTMA.

*Mandatory Termination*

A commenter opposed requiring a mandatory termination after 180 days of abatement because it would be an administrative burden and decrease availability of subsidized housing. Another commenter suggested clarification on whether the plural ''HAP contracts'' at § 982.404(a)(2) reflects other contracts for units besides noncompliant contracts would be terminated due to the HQS noncompliance of one unit. Another commenter suggested that the 180-day proposed timeline for termination is a reasonable balance of interests, as required by statute.

*HUD Response:* HUD has maintained the language around mandatory termination because HUD finds it necessary given the importance of assisted families' housing meeting quality standards. The 180 days maximum is consistent with § 982.455.

HUD has updated § 982.404(a)(2) to read that if the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take enforcement action in accordance with this section.

*Include Renewed Contracts or HAP Contracts Entered Into After the Rule Implementation*

A commenter stated that HUD should expand this rule to include renewed HAP contracts or HAP contracts that are entered into after the rule's implementation.

*HUD Response:* This final rule applies to both new HAP contracts and HAP contracts renewed after this rule is implemented.

*90-Day Voucher Terms*

One commenter supported the 90-day voucher terms for contracts cancelled due to abatement.

*HUD Response:* HUD appreciates the supportive comment.

*PHA Discretion To Waive and Reimburse*

A commenter also recommended clarifying in § 982.404(a)(4) that the PHA has discretion to waive the requirement making the owner responsible for correcting deficiencies where the damage is not from ordinary use, and that the waiver is not just the requirement to be responsible for the deficiency, but the applicability of the entire subparagraph including abatement and withholding provisions. This commenter also urged HUD to clarify that PHAs have the discretionary authority to reimburse the property owner either for a portion or all HAP amounts withheld, which the commenter stated is clearly provided within HOTMA.

*HUD Response:* HUD has clarified in this final rule that the PHA must identify in its Administrative Plan both the conditions and amounts for withholding HAP. This also includes the conditions and amounts of payments made for the period HAP was withheld.

*Monitoring*

One commenter suggested that HUD monitor how many PHAs reimburse funds and review their reimbursement policies.

*HUD Response:* HUD appreciates this suggestion and will consider this outside of this rulemaking.

*Tenant-Caused Damage*

Commenters addressed whether the tenant or PHA should be responsible for repairs to unit damages. One commenter suggested that HUD provide an exception for § 982.404(a)(4) to address damages that have been caused by domestic abusers and obligate PHAs to require the owner to make the repairs in instances of domestic abuse. This commenter also suggested not using incidents of abuse as a means to terminate a survivor's tenancy and to allow the PHA and owner to take all legal action against the abuser for the damage.

Another commenter found the regulations to be confusing and potentially in conflict with State laws and local practice because in many states tenants are prohibited from carrying out their own repairs. The commenter suggested that for HUD to shift responsibility to the tenant to make the repairs, then HUD should place a higher burden on the landlord. The commenter additionally recommended that, if the landlord charges the tenants for repairs to tenant-caused damage, HUD should require a reasonable repayment plan and that the PHA must continue to pay the HAP during the term of the repayment agreement, so long as the tenant continues to abide by the terms of the lease. This commenter suggested the repayment plan allow landlords to charge an initial fee, which must not exceed 40 percent of the tenant's income, and then impose a reasonable period for the tenant to pay the remainder to the landlord, with longer repayment periods for tenants facing financial hardship. This commenter also recommended PHAs should terminate a HAP contract due to tenant-caused damages only after remedies, consistent with State landlord-tenant laws, have been exhausted and HUD should encourage maintaining units as part of the low-income housing stock.

Another commenter recommended that HUD revise § 982.404(a)(4) and (b)(2) as well as the procedure in the case of tenant-caused damages, consistent with HOTMA section 101(a)(3). Another commenter suggested waiving HQS deficiencies caused by tenants from the landlord's responsibility.

*HUD Response:* HUD appreciates the comments around tenant-caused damage to the unit. HUD has revised § 982.404(b)(2) and § 983.208(c)(2) to clarify that in cases of tenant-caused deficiencies, the tenant is not necessarily required to physically correct the deficiencies themselves. Rather, the tenant is responsible for ensuring that the deficiencies are corrected by taking all steps permissible under the lease and State and local law, which might include paying the owner for the costs of the necessary repairs. HUD has not gone further to require a PHA to establish a specific repayment plan. HUD has further revised § 982.404 at paragraph (a)(4) and § 983.208 at paragraph (b)(3) to better align with HOTMA section 101(a)(3) in terms of when the PHA may waive the landlord responsibility for HQS deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person

under the tenant's control, other than damage resulting from ordinary use.

HUD has chosen not to add specific language around tenant damages caused by domestic abusers in this section. However, all VAWA housing protections under 24 CFR part 5, subpart L apply. HUD appreciates the commentor's suggestion but has not added a regulatory requirement for a repayment plan for owner correction of tenant-caused deficiencies. HUD is concerned that imposing additional restrictions on the owner in terms of how and when the owner can recover amounts owed under the lease will discourage owner participation in the HCV program. Nothing in the final rule would prevent the owner from choosing to offer a repayment plan to the family. However, the manner in which the owner may collect amounts owed under the lease for tenant-caused damages should continue to rest with the owner, subject to the terms of the owner's lease.

*Remote Visual Inspections*

Another commenter stated that Remote Visual Inspections (RVI) should not be used to verify a HQS deficiency correction where there is a life-threatening condition on the property. The commenter suggested HUD should require PHAs to conduct in-person inspections prior to a family moving into a unit that failed HQS for health and safety reasons. This commenter expressed that PHAs should be required to independently check for lead hazards in any Housing Choice Voucher (HCV) home and warned that the proxy to test for lead-based paint after watching a short video is insufficient. This commenter recommended a select use of RVI to reduce administrative burdens for PHAs and increase the speed at which voucher tenants can lease-up, without impacting the family's health.

*HUD Response:* HUD appreciates this comment but is not addressing the use of RVI in this rule.

**8. PHA Initial Unit Inspection (§ 982.405)**

*Question 4. Are HUD's proposed deadlines by which the PHA must both inspect the unit and notify the owner if the reported deficiency is confirmed reasonable?*

Commenters found HUD's proposed deadline reasonable because the adoption of the Non-Life-Threatening (NLT) process is optional. A commenter suggested that HUD include additional time in case a resident does not want to move and requests a ''final appeal,'' or courtesy inspection to remain in the unit if the deficiency is now remedied. Another commenter stated that HUD's proposal to allow flexibility in the rule for inspections and notification of deficiencies is adequate, and that the 30-day extension for inspections will permit adequate time for PHAs and owners to schedule the inspection and discuss deficiencies. One commenter stated that 24 hours for a PHA to notify the owner of any life-threatening deficiency is reasonable, but the commenter also suggested extending the timeline to inspect a unit and notify the landlord for emergency items to two days.

Commenters supported HUD maintaining the current timelines for inspections and repairs due to PHAs' discretion over whether to undertake the LTC/NLT process. One commenter offered 15 days to repair, and another commenter suggested PHAs have absolute discretion to establish their own timelines. Another commenter opposed the 30-day repair requirement because PHAs would be required to define what constitutes ''receipt of written notice'' in their Administrative Plan, which can present a challenge for PHAs that do not use email. A commenter recommended modifying § 983.103(c)(2) to specify that the 30-day inspection period applies if a PHA adopts the NLT exception to inspections.

Another commenter stated that HUD should extend the timeline for emergency inspections from 48 to 72 hours. This commenter further suggested that PHAs should be required to adopt HUD's NLT definition only if they implement the NLT inspection option. One commenter suggested that HUD clarify that the 24-hour correction period for LTCs should only apply when the family is in the unit, and that if the HAP is not being paid while the family is waiting for the landlord to correct a deficiency, the family is also not responsible for making the HAP payment. Another commenter stated that HUD is unnecessarily requiring NLT repairs to be made within 30 days of the owner receiving written notice of the defects, and that it is unclear whether requiring PHAs to proactively waive an owner's responsibility to correct defects will be conducted on a policy level or whether it will be conducted on a case-by-case basis, ultimately requiring notification.

*HUD Response:* HUD appreciates the multiple comments about the timeframes for unit inspections and believes the timeframes in the proposed rule were reasonable. HUD notes that the requirements under NLT are distinct from other inspection types and HUD believes that it is reasonable for NLT repairs be made within 30 days, given that application of the NLT provision is voluntary, and, under the NLT provision, the unit has never been in compliance with HQS.

HUD has clarified that, in the case of tenant-caused deficiencies, the owner is responsible until such time as it has been determined that the tenant is responsible in a particular case.

**9. Housing Assistance Payments Contract (§§ 982.451, 983.204)**

*PHA-Owned Unit Certification Option*

Commenters supported the proposal to not require the creation of a separate legal entity, which commenters stated would add costs and complexity and negatively impact PHAs participating in RAD and section 18 conversions. One commenter stated that HUD should not allow a PHA to permit certifications instead of HAP contracts, explaining that such permission would create ambiguity in other regulations that reference HAP contracts but not certifications, hurting those that rely on those regulations to enforce and protect the rights of tenants.

Another commenter suggested adding a statement that phasing groups of contract units into the HAP contract is acceptable in § 983.204(a). This commenter recommended adding, ''or phases thereof'' after ''HAP contract,'' for § 983.204(c).

*HUD Response:* HUD appreciates the support to not require the creation of a separate legal entity. Concerning PHA-owned certifications, in order to eliminate ambiguity of cross-references in other regulations, HUD has revised the language of §§ 982.451(c)(2), 983.204(e)(2) to clarify that the PHA-owned certification serves as the equivalent of the HAP contract as it relates to the obligations of the PHA as owner and that, where the PHA has elected to use the PHA-owned certification, all references to the HAP contract throughout parts 982 and 983 shall be interpreted to be references to the PHA-owned certification.

Further, HUD determined the explanation of how to implement staged completion of contract units would be more appropriate in § 983.156. Therefore, HUD has added a paragraph addressing the commenter's concern to § 983.156 and has cross-referenced § 983.156 in § 983.204(c).

*PBV HAP Contract Effective Date*

Another commenter stated that HUD should not establish a required maximum 60-day timeframe between the lease effective date and the HAP contract execution date, since complex

development and financing timetables may make the timeframe too short. Instead, the commenter recommended a 120-day period before a HAP contract is required to be prospective for PBV projects.

*HUD Response:* The commenter seems to conflate the rules between the tenant-based and project-based voucher programs, as evidenced by submitting the above comment under the heading of § 982.305. The long-standing requirement in the PBV program is that the effective date of a PBV HAP contract must be on or after the execution date of the PBV HAP contract, and the HAP contract must be effective before the effective date of the first lease covering a contract unit occupied by an assisted family. HUD has clarified this requirement at § 983.204(d).

**10.A. Payment Standard Schedules and Basic Range Amounts (§ 982.503(b) and (c))**

One commenter suggested that HUD revise § 982.503(c)(3) to refer to 90 days instead of three months for consistency.

*HUD Response:* This is current regulatory language, and no change was proposed in the rule. HUD, therefore, makes no changes in this final rule.

**10.B. Exception Payment Standards (§ 982.503(d))**

*Greater Flexibility To Reduce Administrative Burden (Question 7)*

Several commenters stated that HUD should provide greater flexibility to PHAs to establish exception payment standards without HUD approval to reduce PHAs' administrative burden and allow more rapid responses to changing rental markets. Another commenter stated that HUD should grant PHAs this flexibility if the PHA has the budget authority to support the increased payment standard as demonstrated by HUD's Two-Year Tool, which calculates the PHA leasing potential considering current Voucher Management System (VMS) data, HUD-held reserves (HHR), and Budget Authority (BA). This commenter remarked that HUD's Payment Standard Tool can also be used to establish exception payment standards.

One commenter expressed that HUD should allow exception payment standards for individual projects rather than require PHAs to apply exception payment standards to every project in the same ZIP code.

*HUD Response:* HUD appreciates the comments about the need for greater flexibility in establishing exception payment standards. In response to these comments, HUD will allow PHAs to go up to 120 percent of the published fair market rent upon notification to HUD so long as the PHA meets the required thresholds as set forth in 24 CFR 982.503(d)(3). HUD disagrees with the comment that PHAs should be allowed to establish different payment standards for individual projects rather than the same payment standard for the applicable geographic area. 42 U.S.C. 1437(f)(o)(13)(H) requires that rents established under PBV HAP contracts must not exceed 110 percent of the applicable FMR, or any exception payment standard approved by the Secretary for the HCV program. Accordingly, there is no statutory authority to establish exception payment standards for individual PBV projects. HUD will continue to require PHAs to adopt one payment standard for an applicable geographic area.

Allow Higher Payment Standards

Commenters generally urged HUD to allow for higher payment standards. Commenters stated that higher standards would allow PHAs to expand geographic choices, allow families to stay in gentrifying neighborhoods, and make the SAFMR exception payment tool more cost-effective to expand housing opportunities in low-poverty areas. A commenter reasoned that in cases where the PHA chooses not to seek HUD approval, families would benefit from a higher SAFMR, which would ensure the prudence of policy because rents would remain subject to reasonableness.

Another commenter suggested that increased payment standards up to 120 percent of the SAFMR should apply for ZIP codes with SAFMRs that exceed the regional FMR. One commenter stated that PHAs should have discretion to set exception payment standards up to 150 percent of SAFMR. Commenters also supported HUD's proposed policy at § 982.503(d)(4) and (e)(1) allowing PHAs to choose to set payment standards up to 110 percent of the SAFMR without HUD approval, and asked HUD to clarify this allowance by explicitly stating it in § 982.503(d)(2). The commenters stated many PHAs are unaware of the flexibility the policy described in § 982.503(d)(2) provides them.

Commenters stated that HUD's proposal in § 982.503(d)(2) to require the lowest SAFMR in an area with more than one FMR constrains PHA authority and HUD should instead allow PHAs to utilize the highest FMR. As an alternative, a commenter recommended that HUD implement a threshold that is not dependent on the FMR and instead use a threshold that is reflective of the risk of excessively high payment standards. Another commenter stated that HUD should rely on its own ZIP code grouping guidance, which allows PHAs to set payment standards for a group of ZIP codes as long as the payment standard is 90 to 110 percent of the SAFMR of each ZIP code in the group. This commenter also stated that SAFMRs are burdensome and undesirable for PHAs to determine payment standards, and as an alternative, PHAs should be allowed to provide data to HUD and have the local field office approve the payment standards based on actual current market data. The commenter noted that there is no reason to change the ability of owners to request increases below 110 percent of the FMR or the reasonable rent.

A commenter supported payment standard increases as providing stability to families and landlords but urged HUD to ensure that rent increases occur at a reasonable rate and not forced with an abrupt increase.

*HUD Response:* HUD agrees with the numerous public comments in support of allowing higher payment standards. This final rule allows PHAs to set payment standards up to 120 percent of the FMR upon notification to HUD that the PHA meets certain criteria. Since the publishing of the proposed rule, HUD has also seen the success of PIH Notice 2022–09, and successor notices, which provided a streamlined regulatory waiver process for PHAs to establish payment standards from 111 to 120 percent of the FMR. Given this, HUD decided that added flexibility to set payment standards up to 120 percent of FMR is sufficient and notes that there are other avenues for PHAs to request to establish payment standards at higher levels.

HUD notes that § 982.503(d)(2) does explicitly allow PHAs that are not in designated SAFMR areas or have not opted voluntarily to adopt SAFMRs to establish exception payment standards up to 110 percent of SAFMR without HUD approval. Additionally, HUD will allow PHAs to opt-in to the SAFMR by notification to HUD, rather than requiring HUD approval by modifying § 888.113(c)(3).

HUD does not agree that requiring the lowest SAFMR in an exception area that crosses one or more FMR boundaries constrains PHA authority. Each ZIP code, regardless of whether it crosses one or more FMR boundaries has one established SAFMR amount. Therefore, a PHA adopting ZIP code-based SAFMRs will only have one SAFMR to choose from, which is how many PHAs establish exception payment standards

using the SAFMR under this provision. However, in some cases, PHAs group ZIP code-based SAFMRs into one FMR area to reduce administrative burden. In the case of grouping, the basic range of all of the selected ZIP codes is still applicable. Therefore, in lieu of establishing a unique payment standard for each ZIP code area, a PHA may use this flexibility to establish payment standards for ''grouped'' ZIP code areas, provided the payment standard in effect for each grouped ZIP code area is within the basic range of the SAFMR for each ZIP code area in the group. As a result, HUD finds that the policy is reasonable and will continue with this final rule as proposed. HUD also notes that § 982.503(d)(4) allows PHAs the opportunity to provide rental market data to HUD to support their request for exception payment standards.

Consolidation of Exception Payment Standard Requirements

A commenter supported consolidating exceptions to payment standards in a single location.

*HUD Response:* HUD appreciates this comment and in this final rule HUD consolidates exception payment standard regulations in § 982.503(d).

Rental Market Data

Several commenters opposed HUD requiring PHAs to submit rent comparability studies or require certification of the rental market data in exchange for higher payment standards. A commenter stated that HUD does not indicate that PHAs are providing insufficient rental data in requests for an exception payment standard. Commenters also noted that HUD requiring data for exception payment standards to be prepared through a market study or by a certified appraiser is administratively and financially burdensome for PHAs. One commenter proposed that HUD establish a procedure to extend payment standards in rapidly changing, low-vacancy, and high-cost rental markets, seeing as there are existing mechanisms to request exception payment standards within the HCV program. Other commenters proposed that HUD accept data from various sources including local market studies from the PHA or other local entities that use data from a reputable or verifiable source, online surveys of the local renter community, PHAs that use a third-party vendor to conduct rent reasonableness for rental market data, rental market studies prepared by institutions of higher education, industry data, or the rent reasonableness evaluations.

A commenter proposed that HUD expand access to data on low-vacancy areas by unit size and exclude public housing developments from calculating FMR/SAFMR because a concentration of low rent units in large public housing developments are in exception payment standard areas. The commenter further stated that when there are differentials with the ACS data, HUD should allow PHAs to provide local data if the data is available.

Another commenter encouraged HUD to establish clear rental data standards for the exception payment standards that require HUD's approval to decrease the administrative burden so that PHAs can obtain justified exceptions, while simultaneously providing reasonable assurance that the higher standard is needed to cover market rents in the area.

Another commenter stated that the exception payment standard assessment HUD requires for a PHA should be easily accessible to under-resourced PHAs and that HUD should provide funding grants to PHAs that will conduct a study for purposes of applying for an EPS. The commenter also stated that HUD should require PHAs to make their assessments of rental market data and rent comparability data publicly available, because this would improve advocates' and residents' understanding of the PHA's assessment of the rental market, as well as create transparency and an opportunity to challenge FMR policies that do not further fair housing goals. One commenter recommended that HUD set the data requirements by notice for easier adjustment based on lessons learned and when new types of data become available.

*HUD Response:* HUD appreciates the comments and intends to issue a PIH notice with further clarification regarding data that must be submitted in support of an exception payment standard request. However, under this final rule at § 982.503, PHAs no longer must submit supporting data for exception payment standard requests between 110 and 120 percent of the FMR if they notify HUD that they meet certain criteria. Additionally, data submitted for exception payment standards greater than 120 percent usually relies on American Community Survey and Census data, and therefore is available to the public already.

*Responses to Question 8 (Maximum Cap)*

Several commenters objected to HUD's maximum cap on exception payment standard amounts due to differences in high-cost markets and requested PHA flexibility. A commenter stated that limits on exception payment standards should be data driven. Another commenter recommended that HUD ensure that PHAs are setting payment standards to affirmatively further fair housing and reduce voucher concentration in high poverty communities, considering that some studies have shown that most SAFMR PHAs set higher payment standards in low-opportunity communities and lower payment standards in higher-opportunity communities. The commenter further suggested that HUD require PHAs to submit rent comparability studies and payment standard schedules to HUD, so that HUD can easily review them and compile them in a national database. According to the commenter, the database would easily allow voucher holders to explore their options regarding portability moves and would help HUD and advocates ensure that payment standards comply with the applicable requirements.

A commenter stated an additional level of scrutiny is reasonable for PBVs, because requiring approval for an exception payment standard above 120 percent of FMR for project-basing vouchers could prevent abuse and make development deals financially acceptable and profitable for developers. A commenter stated that HUD should allow exception payment standards, even if they are high, if there is data showing that the higher standard is needed to cover typical market rents in an exception area. The commenter expressed that instituting a cap preventing PHAs from establishing exception payment standards would risk excluding voucher holders from areas of the metropolitan area, therefore reinforcing economic and racial segregation. In the alternative, the commenter suggested that if HUD establishes a cap, it should be set high enough to ensure that voucher holders have access to a substantial variety of low-poverty and high-opportunity areas, including areas where their own racial or ethnic group does not predominate. This commenter also recommended that HUD adjust the proposed rule to accommodate the use of SAFMRs for non-metropolitan ZIP codes and publish SAFMRs for those ZIP codes whenever sufficient data is available. The commenter stated that HUD should apply the same standard to SAFMRs in non-metro areas as it does in metro areas as well as establish SAFMRs in ZIP codes where there are sufficient data and defaulting to a county-based FMR in ZIP codes where there are not. The commenter added that HUD should

explicitly state in § 982.503(d)(4) that PHAs may not require families to pay more than 30 percent of their income for rent as a condition for receiving an exception payment standard for a reasonable accommodation. The commenter further noted that the need for exception payment standards could be reduced by ensuring that FMRs reflect actual market rents, particularly in areas where rents are rapidly rising.

A commenter encouraged HUD to implement methods for PHAs to increase payment standards where appropriate, such as requiring payment standards in areas with significant disparity between voucher concentration in impoverished neighborhoods and affordable unit distribution or financial incentives. The commenter found upper limits on exception payment standards as unnecessary and stated that PHAs should have maximum flexibility to seek higher standards, as there are already natural ''limits'' on requesting excessive rents. In conclusion, the commenter objected to using the success rate payment standards for metro areas with very low vacancy rates, while requiring other metro areas to use the SAFMR flexibilities.

*HUD Response:* After considering these comments on HUD's questions about instituting a maximum cap on exception payment standard amounts, HUD will not institute a maximum cap. HUD recognizes the need to set payment standards that are responsive to the rent conditions in multiple areas. This final rule also allows voluntary use of SAFMRs in non-metropolitan ZIP codes for which HUD publishes SAFMRs, in order to provide PHA serving those area greater flexibility to set payment standards that reflect local market conditions. While HUD appreciates the comments on additional flexibilities, HUD is not making broader changes to exception payment standards in this final rule, other than those discussed above.

*Reasonable Accommodation (§ 982.503(d)(4))*

A commenter recommended that HUD clarify that ''FMR boundaries'' refers to the ZIP code boundary and not the metropolitan boundary. This commenter further emphasized that HUD must revise the payment standard regulations as well as revise or rescind inconsistent PIH notices, to clearly state that tenants who request a reasonable accommodation for an increase in the payment standard are not required to pay 40 percent of their income in rent to see the benefits of the accommodation. The commenter mentioned that the fair housing laws allow individuals with disabilities to request higher payment standards as a reasonable accommodation if there is a disability-related need for a particular unit (for example, it has accessibility features or is located in proximity to services/supports which will be lost if the client has to relocate); however, the commenter noted that HUD should add to § 982.503(d)(4) because HUD has not fully implemented the third sentence of the HOTMA-revised section 8(o)(1)(D), which prohibits HUD from establishing additional requirements regarding the amount of adjusted income paid by a family receiving a reasonable accommodation.

*HUD Response:* Tenants who request exception payment standards as reasonable accommodations are not required to pay 40 percent of their income in order to benefit from the accommodation, so no change to this rule is needed in order to achieve that result. HUD will issue guidance clarifying this point.

**10.C. Payment Standard Below the Basic Range (§ 982.503(e))**

A commenter suggested proactive requirements, such as HUD establishing limits for when PHAs can set payment standards below the basic range (below 90 percent of the applicable FMR) because PHAs have financial incentives to set lower payment standards, regardless of adverse effects on families. The commenter also recommended that HUD require PHAs seeking approval for payment standards below the basic range to provide rent data showing that the requested standard would be adequate to cover rents and utilities for at least 40 percent of units in each ZIP code and show that no more than 40 percent of current voucher holders would be required to pay more than 30 percent of their income for rent. The commenter stated that HUD should eliminate the success rate payment standard option because the SAFMR-based payment standard flexibility could effectively accomplish more.

A commenter opposed HUD's changes to how it will assess requests for payment standards below the basic range. The commenter expressed that the proposed language threatens the affordability characteristic of the voucher program because the proposed language sets low assessment standards, does not require PHAs to meet rent burden or market rents criteria, and removes the current prohibition on payment standards below the basic range at agencies where more than 40 percent of voucher families pay gross rents above 30 percent of their adjusted income. The commenter encouraged HUD to require PHAs seeking approval for a payment standard below the basic range to implement a policy that holds families harmless where the reduction in payment standard causes an increase in the family's rent. The commenter stated that requiring PHAs to hold families harmless would allow PHAs to incentivize new or moving voucher families to consider lower poverty communities, while not penalizing families who decide to remain in their current home.

Another commenter objected to HUD's proposal to provide PHAs with discretion to determine lower payment standards without HUD approval because PHAs cut corners or costs which end up falling on the participant. The commenter remarked that lower payment standards tend to cause tenants to pay higher rents they cannot afford, and to prevent this HUD should ensure tenants will be held harmless should the family remain in the unit for a reasonable period until the family can relocate to a new affordable unit.

*HUD Response:* HUD appreciates the comments and will continue to require the PHA to request approval to establish a payment standard lower than the basic range. This final rule states that unless necessary to prevent terminations, HUD will not approve payment standards below the basic range if the payment standard would cause the family share to exceed 30 percent of adjusted income for more that 40 percent of families with tenant-based vouchers.

*Responses to Question 9 (§ 982.503(h))*

a. Is 40 percent a reasonable ''significant percentage of families,'' or should the trigger be raised to a higher percentage of families (for example, the HUD review would be triggered if 50 percent of families pay more than 30 percent of AMI as the family share)?

Commenters stated that 40 percent is a reasonable ''significant percentage of families.'' Some commenters stated that a higher percentage would create a burden on families before an assessment is completed. One commenter stated that HUD should not increase the threshold for the share of families paying more than 30 percent of their income, as there are already more than 40 percent of voucher families paying more than 30 percent, and that HUD should lower the threshold below 40 percent. Another commenter stated that available data shows that HUD's monitoring has not lowered the cost-burden on households below 40 percent, which the commenter stated is a high definition of ''significant.'' This

commenter proposed that HUD require PHAs to raise their payment standard and reduce minimum rents when more than 40 percent of families pay more than 30 percent of their adjusted income or when success rates fall below a certain percentage, so that they must set payment standards that avoid rent burdens and allow voucher families to lease-up.

*HUD Response:* HUD appreciates the comments and maintains the current regulation measurement of 40 percent being a ''significant percentage of families'' as reasonable.

Make Data Public

Commenters recommended that HUD make the data and evaluations used to determine rent burdened percentages public with the opportunity for public comment, which would allow voucher holders and other public members to know how the PHA is doing.

*HUD Response:* Data on rent burden is already public in HUD's two-year tool and the payment standard tool, which can be accessed at HUD's HCV Utilization page at *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/Tools.*

Include Rent Burdens in SEMAP

Commenters suggested that HUD incorporate rent burdens into SEMAP. A commenter recommended doing this by adding an indicator measuring compliance with the 40 percent standard. Another commenter recommended adding two new indicators measuring the portion of assisted families that are rent burdened and the percentage of voucher families who are not able to lease up within search periods.

*HUD Response:* HUD appreciates the comments, but changes to SEMAP are beyond of the scope of this rulemaking.

b. If HUD were to replace 40 percent with a higher percentage of families, as described above, should HUD also establish an additional threshold that would trigger a review even though the number of families paying more than 30 percent of AMI had not reached the significant percentage?

Commenters objected to HUD's proposal to establish an additional threshold that would trigger a review, even though the number of families paying more than 30 percent of AMI had not reached the significant percentage. One commenter stated that HUD's proposed standards are arbitrary because PHAs sufficiently conduct internal tracking to monitor rent burden and suggested that if HUD implements a rent burden standard, then PHAs should be exempt if they show that they are trying to address the rent burden issue by using SAFMRs or high opportunity payment standards or if they have an adequate success rate for voucher holders. Another commenter noted that it is unnecessary for HUD to add additional metrics for determining whether HUD should review a PHA's payment standards. One commenter suggested that the trigger for HUD's review should be when 50 percent of the families pay more than 30 percent AMI as the family share of the rent. The commenter explained that families may stay in a unit and pay more than 30 percent of income in tight rental markets where locating a new unit may be financially and administratively burdensome. This commenter suggested consistently defining ''significant percentage'' in all section 8 programs, defining ''significant percentage'' in regulation to prohibit PHAs from altering the definition, and providing additional information on what a PHA must do if the threshold is met.

*HUD Response:* As explained above, HUD appreciates the comments and maintains the current regulation measurement of 40 percent being a ''significant percentage of families'' as reasonable. HUD received multiple comments in opposition to changing the threshold of families paying more than 30 percent of their income as a trigger for review of a PHA's payment standard schedule. Therefore, HUD will continue its current practice of reviewing a PHA's payment standard schedule when HUD finds that 40 percent or more of families occupying units of a particular size pay more than 30 percent of their adjusted monthly income as the family share.

*Responses to Question 10 Regarding Success Rate Payment Standards (§ 982.503(f))*

Many commenters supported retaining success rate payment standards. One commenter objected to HUD tying additional payment standard functions to SAFMRs due to the lack of adoption of SAFMRs. Another commenter explained that the utility of the success rate payment standard is essentially eliminated if PHAs are given the option of setting exception payment standards at up to 120 percent of FMR without HUD approval, and stated that moving to and from the 40th to 50th percentile of rent has an almost identical impact on the resulting payment standard. This commenter supported retaining the success rate payment standard if HUD approval will still be required for exception payment standards above 110 percent of FMR. One commenter opposed retaining success rate payment standards. The commenter stated that the standards, set at the 50th percentile of the metro FMR, were ineffective at the stated goal of increasing housing opportunity for voucher families. Additionally, the commenter noted that the SAFMR final rule eliminated the regulations that governed the establishment of FMRs using 50th percentile rents, and HUD is currently phasing out its use of success rate payment standards. Another commenter stated that HUD should eliminate the success rate payment standard option because the SAFMR-based payment standard flexibility could effectively accomplish more.

*HUD Response:* Because this final rule increases flexibility for PHAs to set exception payment standards up to 120 percent of the FMR, HUD has determined that it is unnecessary to also retain success rate payment standards. This final rule eliminates the ability for PHAs to receive new success rate payment standards but allows them to continue to use previously approved success rate payment standard amounts.

**11. How To Calculate Housing Assistance Payment (§ 982.505)**

A commenter stated that HUD must ensure that participants are provided due process and a reasonable opportunity to decide whether the family can afford to remain in the subsidized unit if HUD increases payment standards after the initial HAP contract. The commenter offered the following suggestions if HUD increases payment standards: (1) allow the tenant 60 days after the increase request to decide or request moving papers; (2) phase in the rent increase over time or require that the PHA make up the difference to the higher standard; or (3) mirror the timeframe in § 505(c)(3) for increases and decreases. The commenter stated the proposed rule fails to adequately address arising problems when PHAs create payment standards that trap residents in low-opportunity, high poverty, and high crime areas, when families may need higher exception rents to access better schools, employment, or other resources for self-sufficiency. As a remedy, the commenter recommended that HUD map where families can live within the PHA's payment standards. One commenter recommended that HUD remove § 982.505(c)(4)(iii) to streamline the rent change process and prevent confusion among families that expect changes during the recertification process and not outside of the recertification process.

*HUD Response:* HUD appreciates the comments received on when to apply

increases in the payment standards to the family. This final rule, at § 982.505, requires PHAs to apply increases in payment standards no later than the earliest of (1) the effective date of an increase in the gross rent will result in an increase in the family's share, (2) the family's first regular or interim reexamination, or (3) one year following the effective date of the increase in the payment standard amount. This approach provides participating families the benefit of these increases more consistently and helps ensure that their portion of the rent remains affordable. This final rule also allows PHAs to adopt a policy, at their option, to apply an increase in the payment standard before these events occur. HUD will not remove paragraph (c)(4)(iii) because this provision eliminates the potential lag time between an increase in the rent to owner brought about by an increase in the payment standard and the increase in the assistance payment made on behalf of the family as a result of the increase in the payment standard.

*Timeline*

One commenter supported HUD's revisions on when to apply a reduction in the payment standard because the changes will promote fairness and consistency in the voucher program. Another commenter opposed the two-year adjustment timeline as an administrative burden for PHAs and believed it would provide no tangible benefit for families over a shorter timeline. This commenter stated that the current timeline of the second recertification already ensures adequate preparation for families and is when all contact with the family is planned from the PHA's perspective.

*HUD Response:* HUD appreciates the range of comments. HUD in this final rule will continue with requiring PHAs to give families two full years from the date of the application of the payment standard decrease to ensure all families have the same period of time to adjust to the decrease in the payment standard.

*Payment Standard Timeline*

A commenter supported requiring application of payment standard increases on the effective date of a gross rent increase instead of waiting until the next annual recertification or one year after the increase. The commenter recommended that HUD add a requirement to § 982.505(c)(4) that PHAs immediately address payment standard increases during the HAP contract term and before the effective date of the new payment standard, to protect tenants in rapidly rising rent markets.

*HUD Response:* HUD appreciates the comments and this final rule creates additional required times for when a payment standard must be increased in § 982.505(c)(4). HUD finds that these additional requirements sufficiently balance ensuring participants receive the benefit of payment standards and PHA administrative burden in applying increases in the payment standards.

*Payment Standard Update Burden*

A commenter opposed HUD's proposal at paragraph (c)(4) of § 982.505 (How to calculate HAP), adding two new points at which the family's payment standard may be increased, as unnecessarily burdensome and expressed concern regarding whether the number of transactions that would trigger the payment standard calculation to determine if an ''increase in the family share'' occurred will greatly outnumber the times the higher payment standard would be applied under the rule and expressed an appreciation for data supporting the proposed rule.

*HUD Response:* HUD appreciates these concerns. When paragraphs (c)(4) and new paragraph (c)(5) are read in conjunction, HUD believes the burden on PHAs of this change is relatively small and outweighed by the benefit to the family.

Specifically, the requirement that this commenter is concerned about, is as follows: when there is an increase in the payment standard, and when there is an increase in the gross rent, and the increase in gross rent would increase the family share, then the PHA must apply the increased payment standard, to reduce the burden on the family.

This requirement is limited to situations where the gross rent increase would increase the family share is intended to decrease the burden on the PHA, not increase it. If a PHA would prefer not to make this calculation, the PHA may apply the new payment standard every time there is a gross rent increase, or indeed as soon as they want to, regardless of whether the gross rent increase changes the family share calculation, per paragraph (c)(5).

**12.A. Utility Allowance (UA) Schedule (§ 982.517)**

Commenters suggested HUD allow PHAs to provide a UA for wireless internet to expand opportunity. A commenter noted that there is no statutory or regulatory prohibition on it and PHAs can use their own budgetary judgement to decide if they can afford to provide a UA for internet. Another commenter proposed that HUD consider broad ways to support assisted households during and after the pandemic. One commenter suggested that HCV UAs should include fees charged, as well as reflect the actual rates charged by the major utilities serving the units and the rate plans used by most tenants. This commenter also recommended that HUD not consider low-income discounts, unless there is universal access and verified tenant participation. To ensure transparency, the commenter also stated that supporting documentation for the calculation for the PHA's UA schedules for both HCV and PBV programs should be available to tenants' rights advocates, without resorting to cumbersome and vague FOIA and State public records acts. The commenter recommended that HUD's review should be retained and strengthened, to ensure compliance with the regulatory standards and consistency among UAs in similar climatic regions and markets, rather than ending the requirement for PHA submission of the schedule. Another commenter suggested that HUD continue to require PHAs to submit their UA schedules to HUD, which would provide a system of checks and balances and much needed oversight.

*HUD Response:* HUD is currently reviewing ways to support internet access for the families it serves in all assisted housing programs and how to best complement subsidies provided through the Affordable Connectivity Program (ACP) and Lifeline administered by the Federal Communications Commission (FCC). HUD is working to raise awareness among PHAs so they can help families enroll in the ACP and Lifeline programs. In addition to supporting the FCC programs, HUD is reviewing its assisted housing program policies across the department to align policies and support broadband. At this time, HUD is not providing in this final rule that PHAs may use UA schedules for internet; however, HUD has removed the language that explicitly prohibits wireless internet. In place of language prohibiting wireless internet, HUD added language providing that HUD may add utilities required to pass HQS by **Federal Register** notice allowing for public comment.

The language in § 982.517(b)(1) states that ''the utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality.'' The typical cost of utilities and services includes surcharges charged by the utility company. Many PHAs separate the surcharge out on the UA schedule. For

example, a family may have natural gas for their heating, cooking, and water heating and the natural gas company charges a monthly surcharge for this utility. A rate-based utility allowance is provided on the schedule for each of these utilities and the PHA also provides the family with an allowance for the surcharge if they have one or more natural gas-powered utilities in their home. While this is not a change in policy and HUD believes this is already the common practice at PHAs, HUD recognizes that it would be helpful for the regulation to be clearer. HUD is adding ''applicable surcharges'' to the list of utilities and services on the utility allowance schedule in § 982.517(b)(2)(ii).

PHAs develop their area-wide utility allowance schedules, both the regular schedule described in § 982.517(b)(v)(2)(i) and the new option for an energy-efficient schedule provided in § 982.517(b)(v)(2)(ii), based on the cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. Household income or discounts provided to certain households are not a factor in the development of the utility allowance schedule.

HUD understands the concerns expressed by commenters encouraging HUD to continue collecting utility allowance schedules from PHAs. While the proposed language would have allowed submission to HUD only upon request for utility allowance schedules from PHAs, HUD agrees with commenters that proactive submission of utility allowance schedules will help with oversight. HUD has reverted § 982.517(a)(2) in this final rule to the existing codified language which requires submission of these schedules to HUD.

**12.B. Area-Wide Energy-Efficient Utility Allowance Schedule (§ 982.517(b)(2)(ii))**

Commenters stated that HUD should authorize PHAs to use energy-efficient utility allowance (EEUA) schedules. Another commenter stated that PHAs should have the option to implement alternative utility allowance schedules though they may be burdensome to implement. One commenter suggested that HUD should not require entire buildings to achieve energy saving design certifications for an individual unit to qualify for an EEUA. Further, the commenter stated that due to the time and cost, many property owners may elect to only install energy-efficient appliances and other design standard upgrades, and if so, property owners should not be penalized for their inability to achieve energy savings design certifications for entire buildings especially where the property owners can demonstrate that the EEUA schedule would best encourage conservation and the efficient use of HAP funds based on historic utility consumption data.

Other commenters stated that EEUA schedules should be voluntary because they require annual updates and are costly, and, as a result, they are better suited to PBV where the owner can be required to commission an annual update to keep using the schedule, or PHAs could make their decision based on their market areas and funding. Another commenter stated that utility allowance options would present a high possibility for error and could open PHAs up to charges of discrimination because it would be hard to identify units where alternate utility allowances could be used. A commenter suggested that HUD use the HUD Utility Schedule Model (HUSM) for all project types to minimize project-specific utility's administrative burden as well as permit PHAs the ability to decide their HUSM approach to determine UAs and be required to publish this in their Administrative Plan.

*HUD Response:* HUD appreciates the many comments supporting the option for PHAs to establish an EEUA. HUD believes that permitting EEUA for units that are located in buildings that do not have a full-scale energy savings design is premature. While HUD agrees that allowing PHAs to use an EEUA on substantially retrofitted units in an older building could encourage owners to make units more energy efficient, more guidance is needed to ensure the EEUA is not applied too liberally leaving many tenants with UAs that are too low. This final rule allows PHAs to implement an EEUA for units in Energy Star or LEED certified buildings; however, HUD will release more guidance before allowing additional units to use the EEUA schedule. PHAs must be careful to ensure that their EEUAs will work for most energy efficient properties. It would not be appropriate to use LEED estimates for UA costs if Energy Star certified units make up the majority of energy efficient units in the area. In that case, a PHA may decide to only apply the EEUA to LEED certified units or base the EEUA on Energy Star estimates. The establishment of an EEUA schedule is voluntary. PHAs in areas that have a large percentage of units that are energy efficient may wish to have a separate schedule to ensure the utility allowances for these units are not unnecessarily high. This may also reduce requests for project-specific allowances in the PBV program that are often needed due to energy efficient requirements, since the area-wide EEUA schedule will also apply to PBV projects that meet energy efficient requirements.

**12.C. Utility Allowance Based on Flat Fees (§ 982.517(b)(2)(iii))**

Several commenters offered suggestions for HUD's proposal to provide PHAs the discretion to substitute flat fees charged for certain utilities. One commenter recommended that HUD modify § 982.517(b)(2)(iii)'s current language of ''only if the flat fee charged by the owner is less than,'' to ''only if the flat fee charged by the owner [is] no greater than,'' to account for the possibility that the flat fee is equal. One commenter objected to HUD's flat fee proposal by stating that flat fee UAs do not ensure that a tenant is exceeding their maximum share of the rent, stating that UA should be based on actual use.

*HUD Response:* HUD will adopt in § 982.517(b)(2)(iii) the suggested language changing ''less than'' to ''no greater than'' to make flat fees easier for PHAs to administer. HUD would like to clarify that flat fees are meant to be used only when the landlord charges a set fee for certain utilities and the fee does not change based on consumption or other criteria. If the landlord charges a variable fee for a utility, then the PHA would not have the option of using the flat fee to calculate the utility allowance. Instead, the PHA would use the appropriate area-wide utility allowance based on the size and type of unit. Applied correctly, tenants will not pay more than the flat fee used to calculate the utility allowance.

**13. Manufactured Home Space Rental (§§ 982.620–982.623)**

Commenters recommended that HUD amend § 982.620 to require that PHAs must provide the option for tenants to use voucher funds for the costs of purchasing a manufactured home because without the requirement, the HOTMA amendments will be undermined. A commenter also noted that section 112 of HOTMA eliminated the option for a PHA to offer only assistance under a voucher for the cost of leasing land on which a manufactured home is sited (but not for the annual cost of purchasing a home) and therefore recommended HUD amend § 982.620(b)(2) to delete the phrase ''to a manufactured homeowner to lease a manufactured home space'' and add in its place, the words ''under paragraph (a)(3) of this section.''

A commenter suggested the following modification for § 982.620(a)(3): ''The

PHA may provide assistance for a family that owns a manufactured home (including a family that has recurring expenses to amortize the cost of purchasing a manufactured home) and leases only the space. The PHA shall make this option available upon a bona fide request from any party in the PHA's jurisdiction.'' The commenter also recommended deleting the clause, ''to a manufactured homeowner to lease a manufactured home space'' from § 982.620(b)(2), since that type of assistance is no longer authorized. The commenter requested clarification behind why HUD proposed to require PHAs to make separate payments to the landowner and to the family for debt costs, rather than only making a single payment to the family. The commenter opposed HUD's requirement that space owners sign a HAP contract with the PHA, if the owner waives receiving a direct PHA payment. The commenter also proposed that HUD delete the first sentence under § 982.623(d)(2) regarding the HAP contract and revise the second sentence to state that the owner's acceptance of the family's rent payment is a certification that the space complies with HQS as specified in § 982.621(a) and (b). Some commenters stated it is unnecessary to require the tenant pay for the landowner's HAP contract of manufactured home space, because regardless of the tenant timely paying rent, the landowners must go to the PHA for payment, which has the contract. A commenter claimed that incidental protections that a HAP contract with the landowner might provide are not commensurate with the creation of an additional barrier to using the voucher option.

*HUD Response:* HUD does not have the authority under the statute to require that PHAs provide manufactured home space rental assistance. 42 U.S.C. 1437f(o)(12) states, ''A public housing agency *may* make assistance payments in accordance with this subsection on behalf of a family that utilizes a manufactured home as a principal place of residence and rents the real property on which the manufactured home owned by any such family is located'' (emphasis added). The use of the word ''may'' in the statute unambiguously means provision of this assistance is at the PHA's discretion. To be eligible for manufactured home space rental assistance, the family must own the manufactured home. The ownership does not need to be outright, and they may still be making monthly payments to amortize the purchase of the manufactured home. Both scenarios are considered ownership similar to how a person who owns a home with a mortgage is still considered the homeowner. For this reason, HUD is finalizing the language in the proposed rule for adoption in this final rule. Owners of manufactured space rental will still be required to sign a HAP contract even if the PHA does not pay them rent directly. The HAP contract is more than a vehicle for conveyance of rent payments. The HAP contract is essential to ensuring compliance with HQS, including the appropriate utility hookups, and the owner's agreement to comply with rent reasonableness, among other requirements.

**14. Homeownership Counseling (§ 982.630(e))**

A commenter stated that homeownership counseling services should only be provided by HUD-certified counselors working with a HUD-approved housing counseling agency. Another commenter approved of HUD requiring certified counseling for the homeownership program as well as supported HUD excluding home equity as an asset and not decreasing the payment standard of the homeownership program.

*HUD Response:* HUD appreciates the comments and will be moving forward with requiring any homeownership counseling to be conducted by a HUD-certified housing counselor working for a HUD-approved housing counseling agency. This requirement conforms with current Housing Counseling requirements.

**15. Amount and Distribution of HAP (§ 982.641(f))**

A commenter supported maintaining utility amounts for homeownership families based on housing size, instead of family size.

*HUD Response:* HUD appreciates the supportive comment and will continue with the proposed language at § 982.641(f)(3) stating that the use of a utility allowance schedule under § 982.517(d) does not apply to the homeownership option because the utility allowance is always based on the size of the home bought by the family receiving homeownership assistance.

**16. PBV: When the Tenant-Based Voucher Rule Applies (§ 983.2)**

A commenter supported HUD's policy to not require new verification at briefing for the PBV program and making the 60-day timeframe inapplicable under the PBV program because this approach improves PHAs' ability to administer PBVs.

*HUD Response:* HUD appreciates the support and agrees that the standard at § 982.201(e) is inapplicable to the PBV program, as families are not issued vouchers in the PBV program, but notes that the applicable timeframe for PBV is codified in § 983.251(a)(2).

**17. PBV Definitions (§ 983.3)**

*Definition of* ''*Development Activity*''

A commenter expressed concern with HUD's definition of ''development activity,'' due to its potential harmful impact given its lack of previous implementation for other HUD programs. Another commenter stated that the definition is adequate because minor renovations are not included in the definition of development work. A commenter stated that the definition of ''development activity,'' was unclear and broad and should be limited to new construction, adaptive reuse, or substantial rehabilitation of existing housing in compliance with HQS. Another commenter suggested that including replacement of equipment and materials with items that are of improved quality in the definition of ''development activity'' would deter project owners from modernizing and completing other updates to properties, which neither HUD's regulations nor form of HAP contract require a project owner to report to a PHA. This commenter also recommended that the development activity should be limited to instances of new construction or substantive rehabilitation of housing that fails to substantially comply with HQS. This commenter further expressed that development requirements, such as subsidy layering review, should not continue to apply to units once they are placed under HAP contract or when units are being added to an existing HAP contract. A commenter warned that HUD is exceeding its statutory authority by having a broad definition of development activity, because HUD does not have the Congressional authority to regulate a project owner's ability to engage in development work following execution of a HAP contract, and HUD has not historically regulated this type of development activity. This commenter stated that the 1937 Act provides PHAs with discretion on when to allow owners to engage in development work.

*HUD Response:* Upon review of comments regarding this definition and other sections of the proposed rule, HUD determined using a single term to refer to both rehabilitation and new construction done in order for the project to receive PBV assistance and for other work occurring later during the

term of the PBV HAP contract produced significant confusion. Similarly, the corresponding regulatory structure resulting from the dual-purpose definition, such as using the development requirements of subpart D (Requirements for Rehabilitated and Newly Constructed Units) of part 983 to address certain requirements applicable to work occurring later during the term of the PBV HAP contract, produced significant confusion. As a result, HUD has removed work occurring later during the term of the HAP contract from the proposed definition of ''development activity,'' and instead covers this work under the new definition of ''substantial improvement.'' The regulatory structure also is revised in this final rule to eliminate this confusion, as described throughout this preamble. The public comments on the proposed definition regarded the portion of the proposed rule definition of ''development activity'' that is instead covered in this final rule by the definition of ''substantial improvement.''

HUD disagrees with the commenter's characterization of previous implementation, given HUD's prior use of a similar definition, as provided in the former 24 CFR 983.210(j) (which is removed in this final rule) and described in 80 FR 52511 (Mar. 9, 2015), which drew from requirements of other programs. HUD appreciates the positive comment. HUD does not adopt the proposal to define substantial improvement as new construction, adaptive reuse, or substantial rehabilitation, as HUD believes those terms are less clear than the proposed definition. HUD does not believe that including in the definition a substantial improvement in the quality or kind of equipment and materials will deter owners from modernizing projects, since this final rule implements a reasonable process for such activity to occur. HUD does not adopt the proposal to define substantial improvement as new construction or substantive rehabilitation of existing housing that fails to substantially comply with HQS, as HUD finds there is a compelling need to encompass additional activities that may greatly impact occupants in the rules governing substantial improvement. HUD also notes that it has a clear mandate under law to ensure housing occupied by assisted families is decent, safe, and sanitary, which includes establishing rules governing substantial improvement that occurs following contract execution, as such activity necessarily impacts occupants.

*Definitions of ''Newly Constructed Housing'' and ''Rehabilitated Housing''*

Another commenter proposed that the definitions of ''newly constructed housing'' and ''rehabilitated housing'' should incorporate the concept of housing ''under construction'' that HOTMA inserted in new section 8(o)(13)(F)(iii). This commenter suggested that HUD's proposed rule failed to account for this provision's direction that HUD allow PHAs to enter a HAP contract for ''any unit that does not qualify as existing housing and is under construction[.]'' This commenter suggested HUD make clear that projects which are under construction qualify as newly constructed.

*HUD Response:* HUD disagrees that the wording of the definition of newly constructed housing forecloses selection of a project that is under construction. For example, projects for which development activity occurred prior to PBV selection would nevertheless meet the definition of newly constructed housing if any of the units in the project ''do not exist on the proposal or project selection date and are developed after the date of selection for use under the PBV program.'' Likewise, projects may qualify as rehabilitated housing despite any development activity that occurred prior to PBV selection where the project will be developed for use under the PBV program and meets the other components of the definition of ''rehabilitated housing.'' Further, as previously provided in the regulations, contracts for newly constructed and rehabilitated projects may be executed in stages, even though the construction has not been completed, which is not in conflict with the definitions. Neither definition contains language barring projects for which some of the development occurred earlier from being considered newly constructed or rehabilitated; rather, the definitions affirm that there will be development that occurs after the proposal or project selection date for purposes of using the projects as PBV units. HUD recognizes that in many cases projects may engage in development activity for legitimate reasons unrelated to the plans to project-base a project prior to the PHA selection of the project for PBVs. In order to effectuate the applicable development requirements at § 983.153 without foreclosing selection of projects under construction, the regulation at § 983.154 requires that, in cases in which the PHA and owner use an Agreement prior to development activity, development activity does not commence from the date of proposal submission or board resolution, as applicable, until the effective date of the Agreement, and that, in cases of development without an Agreement or use of an Agreement after construction or rehabilitation has commenced, all development occurring after the date of proposal submission or board resolution, as applicable, complies with § 983.153. Further, while HUD does not change the definitions for the purpose the commenter proposed, HUD has provided an additional mechanism for execution of a HAP contract for a rehabilitated housing project while it is under construction in this final rule, as further explained in the summary of changes to § 983.157 above. Taken together, HUD believes §§ 983.3, 983.154, and 983.157 provide an appropriate balance between effectuating the development requirements and providing a mechanism to allow a PHA to project-base projects under construction. HUD therefore declines to expand the definition of newly constructed housing to provide an explicit reference to housing under construction, as doing so would change the definition from a statement of the meaning of the term to a provision that could appear to conflict with the development requirements in subpart D of part 983.

*Definition of ''Project''*

Commenters approved of HUD's proposal to keep its current definition of ''project,'' which is statutory, and which a commenter preferred for administrative consistency and clarity purposes. Another commenter recommended that HUD delineate the definitions for each program. Commenters suggested that HUD create a definition that allows for buildings in scattered sites (*i.e.,* non-contiguous sites), and establish conditions for the scattered sites, such as requiring buildings to have the same owner and containing a certain number of subsidized units in each building. A commenter noted that this would be consistent with HUD's position in the PBV, RAD, and ''Mod'' programs. Another commenter noted that buildings that span multiple blocks in a city grid and have historically been operated as part of one project are classified as individual projects for purposes of PBV, which creates an incongruous result. This commenter further expressed that the statute appears to support limiting the definition of ''project'' to only assessing whether a project complies with the income-mixing requirement.

*HUD Response:* HUD agrees that retaining the prior definition of ''project,'' consistent with the statutory

definition of ''project'' for purposes of the income-mixing requirement (project cap), supports the goals of administrative consistency and clarity. However, HUD found that the proposed rule as written appeared to inadvertently remove the discretion PHAs previously had, through the Administrative Plan, to further define ''project'' within the statutory parameters. HUD finds that PHAs may need such discretion for optimal program operation in certain cases. Given these considerations and positive comments received, HUD restores and codifies in this final rule the meaning of the term ''project'' as it was previously understood. For programs other than the PBV program, the definition of ''project'' applicable to such programs can be found in those programs' governing rules.

HUD declines to further define ''project'' to allow scattered sites to constitute one project. Doing so would increase the complexity of determining what constitutes a project, for purposes of the income-mixing requirement and for other purposes, to a level unwarranted by a relatively small administrative advantage in a small number of cases. However, HUD will continue to allow multiple projects, each consisting of a single-family building (defined in this § 983.3(b) as no more than four total dwelling units), to be under one HAP contract. HUD has taken this opportunity to update the language in § 983.202(a) to more clearly state that placing multiple projects, each consisting of a single-family building, under one HAP contract is allowable. HUD has also updated § 983.154(a) to clarify that it is allowable to place under one Agreement multiple projects that each consist of a single-family building and § 983.51(a) to clarify that PBV proposals may cover multiple projects where each consists of a single-family building. HUD agrees that whenever a HAP contract covers multiple projects all such projects must be owned by a single owner because, as a general principle, an owner can only execute a HAP contract for units the owner has authority to commit in a HAP contract (or a certification, in the case of a PHA-owned project exercising the option in § 983.204(e)(2)). The number of subsidized units in each project will continue to be governed by existing PBV requirements, particularly the income-mixing requirement (see § 983.54(a)).

Regarding the concern about buildings that span multiple blocks being classified as individual projects for purposes of PBV, HUD clarifies that the definition of ''project'' can include parcels separated by a public way, so long as such parcels can reasonably be considered contiguous (defined in this § 983.3(b) for this purpose to include ''adjacent to'' or ''touching along a boundary or a point''). For simplicity, the definition describes in general terms the buildings and parcels of land that qualify as ''projects'' in the vast majority of cases. Where natural or engineered features make up a boundary between buildings or parcels, PHAs are expected to reasonably determine if the buildings or parcels make up a project. Considerations include the extent and difficulty of access from one building to another, public regard of the buildings as interrelated, and whether the classification proposed would serve the statutory purpose of the income-mixing requirement. HUD intends to publish further guidance on this matter.

*Definition of Request for Release of Funds and Certification*

A commenter suggested HUD delete the definition of ''request for release of funds and certification,'' which is not used in the regulations and creates an unintended parallel process to the environmental review and replace it with the definition of ''letter to proceed,'' which is used in the regulations. This commenter suggested in the alternative to change ''PHAs'' to ''responsible entities,'' because the responsible entity signs the request for release of funds under 24 CFR part 58 for environmental reviews, and reorder the current language under 24 CFR part 58 because it suggests that Authority to Use Grant Funds (AUGF) would authorize a HAP, which is inaccurate.

*HUD Response:* HUD has considered this comment and determined that, while ''request for release of funds and certification'' is in fact used in § 983.56 of the regulation and is not the same as a ''letter to proceed,'' which is issued by HUD, the lack of clarity the commenter points out is best addressed by moving the content of the definition of ''request for release of funds and certification'' from § 983.2 to the appropriate section of § 983.56.

*Definition of Comparable Rental Assistance*

A commenter stated that the definition of comparable rental assistance does not explicitly include the statutory requirement that assistance must be tenant-based. This commenter suggested HUD specify that comparable assistance cannot be time-limited or subject to requirements that do not apply under section 8(o).

*HUD Response:* HUD agrees that the definition of comparable rental assistance should include the statutory requirement that assistance must be tenant-based. HUD therefore amends the definition, in this final rule termed ''comparable tenant-based rental assistance'' at § 983.3(b) to be consistent with the statute. HUD notes that the terminology used in § 983.261(b)–(c) before publication of this final rule was consistent with section 8(o)(13)(E) of the 1937 Act. HUD therefore views this change only as a clarifying change to the definition. HUD additionally specifies the essential elements of comparable tenant-based rental assistance in this final rule. That is, comparable tenant-based rental assistance enables a family to obtain decent, safe, and sanitary housing in which: (1) a family's monthly payment is not more than 40 percent of adjusted income; (2) the rental assistance is not time-limited; (3) the rental assistance is not conditioned on a work or supportive service requirement; and (4) the rental assistance affords the family a portability option. HUD does not in this final definition prohibit the assistance being subject to requirements that do not apply under 8(o) because doing so would reduce options available to PHAs and families, as many tenant-based rental assistance programs across the country likely do not meet every HCV program requirement. Such a requirement could increase wait times for families wishing to move from PBV units with tenant-based assistance.

HUD in this final rule also takes this opportunity to clarify that the ''gross rent'' calculation refers to the family's share of the gross rent, and not the total gross rent. This is a clarifying change consistent with how HUD already applies this definition. Additionally, to consolidate definitional language, this final rule removes language explaining the meaning of ''comparable tenant-based rental assistance'' at § 983.260(b)(4) such that the complete definition is in this final rule at § 983.3(b).

*Existing Housing*

Support and Disagreement

A commenter supported the proposed definition of ''existing housing'' in relation to how long it would take to make any repairs needed to comply with applicable quality standards and stated that it is a significant improvement over the use of a fixed and arbitrary cost of repairs as HUD proposed previously.

Other commenters found the current existing housing definition more flexible for PHAs. The commenters stated that the proposed definition did not clarify the existing requirement and

could create different implementation across the country. One commenter stated that PHAs should retain discretion to determine whether a project constitutes existing housing and to define substantial compliance with HQS in their Administrative Plans.

*HUD Response:* HUD appreciates the supportive comment and proceeds with a standard that does not include cost, as further discussed below. HUD finds that including a definition of ''substantially comply'' in this final rule will improve consistency and predictability in implementation of the PBV program across the country.

Potential Regulatory Burdens

One commenter urged HUD to reconsider the definition change due to the potential regulatory burden of narrowly defining ''existing housing'' while simultaneously expanding the definition of ''development activity,'' which could have chilling implications on PBV programs. Another commenter stated that treating some of the units as ''existing'' and some as ''rehabilitation'' would be confusing and regulatory burdensome for PBV purposes.

*HUD Response:* HUD concludes that, given the strong use of rehabilitated housing in the PBV program, clarification that a project is rehabilitated housing when an owner is undertaking extensive or lengthy work will not chill participation. However, HUD believes that the new option at § 983.157 for rehabilitated housing to complete development activity after HAP contract execution will provide additional flexibility needed to attract more PBV owners. In response to comments, HUD has revised the definitions of existing housing, newly constructed housing, and rehabilitated housing to clarify that the classification of project type is on a project basis.

Potential Rent Cost Burdens

A commenter opposed shifting from building condition (*e.g.,* current HQS status) to building correction plan (*e.g.,* ability to make repairs) as too high a burden, especially as the standard correction period is 30 days. This commenter warned that the proposed definition would likely result in additional rent burdens for tenants in units that cannot qualify as existing housing and encouraged HUD to define existing housing based on the percentage of units that pass HQS.

*HUD Response:* HUD agrees with the commenter that it is appropriate to incorporate into the definition of ''substantially comply with HQS'' the standard deficiency cure period applicable to the program, since that period best represents an overall correction timeline that remains compliant with HQS enforcement standards. This change is reflected in this final rule's definition of ''existing housing'' at § 983.3. HUD considered the suggestion to use, instead of the proposed definition, percentage of units passing HQS but determined such a standard would inappropriately allow classification of units with rehabilitation needs as existing housing. HUD appreciates the concern for the rent burden of tenants while awaiting assistance but determines that it is better addressed by adding the new option at § 983.157 for rehabilitated housing to complete development activity after HAP contract execution and maintaining the options at § 983.103(c) for initial execution before HQS compliance is determined via inspection. In other words, amending the definition of existing housing to include units immediately undergoing extensive work would have been an inappropriate mechanism to address the concern.

General Comments About Existing Housing Restriction

One commenter supported HUD's putting restrictions on the applicability of the definition of existing housing and noted it had experience with projects seeking to circumvent executing an Agreement for rehabilitation by requesting the project be defined as existing housing based on the units being already occupied, even though the owner was planning some level of rehabilitation.

Another commenter disagreed with the framing of the question because it suggests that PHAs and project owners are ''circumventing'' rehabilitation program requirements when selecting existing housing projects that comply with HUD's definition of existing housing.

*HUD Response:* HUD appreciates commenters' perspectives regarding circumventing rehabilitation requirements and believes that PHAs and owners will be better able to determine when rehabilitation rules apply using this final rule's definitions.

Question 13. Is the 48-hour standard reasonable, particularly for larger projects?

One commenter supported HUD's proposed definition of ''substantially complies with Housing Quality Standards (HQS).'' Other commenters stated that the 48-hour timeframe is unreasonable, especially for large projects with multiple units requiring minor repairs or in housing markets where contractors are scarce because some units require renovations that are impossible to complete in a 48-hour timeframe.

*HUD Response:* Commenters' explanations of when a 48-hour standard may be infeasible were persuasive, and HUD has changed the standard in this final rule.

Alternative Timeframes

One commenter suggested that the 48-hour timeframe only apply to individual units and not the entire building. Commenters also suggested alternative timeframes to cure HQS deficiencies including 72 hours for projects with more than 20 failed inspections, and a maximum of 5 or 10 business days to cure deficiencies.

A commenter expressed that the HOTMA alternatives to initial inspections are unusable if HUD requires a PHA to conduct and a project to pass an HQS inspection before making an existing housing determination.

One commenter proposed allowing PHAs to integrate in their policies a specific timeline for completion of the repairs based on local conditions.

Another commenter recommended defining the timeframe based on the time it takes to complete a repair, rather than the time it takes to begin a repair.

*HUD Response:* In this final rule, HUD adopts a timeframe based upon the standard deficiency cure period as part of a reasonable representation of substantial compliance with HQS. Under this final rule, PHAs must determine whether, taking into consideration the totality of the deficiencies in the project, the owner will be able to correct the deficiencies in a 30-day period. HUD does not impose through this definition a requirement that correction occur at a specific time; the standards at § 983.103(c) dictate when the corrections must occur, depending in large part on whether the PHA has adopted the discretionary options for initial inspection. HUD believes that this definition provides sufficient flexibility to account for local conditions and differences in unit repair times while still adequately distinguishing existing housing from housing properly characterized as rehabilitated.

*HUD's Previous Proposed Definition of Existing Housing ($1,000)* [15]

One commenter supported the prior proposed definition because it was clear

[15] *See The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs,* 77 FR 28741 (May 15, 2012).

and unambiguous. However, other commenters disagreed with the prior proposed rule and suggested that existing housing projects should not be permitted to make over $1,000 of improvements per unit within the first year of their HAP contract or to make significant improvements within the first 5 years, unless there are extenuating circumstances as determined by the PHA.

Commenters suggested that the definition should include units where planned rehab exceeds $1,000 over the next year per unit, as this amount is too low in many high-cost areas. Another commenter stated that the $1,000 limit previously proposed by HUD was not required by HOTMA. A commenter suggested that HUD permit PHA discretion to create alternative standards based on a reasonable cost for each unit, considering that 48 hours for deficiency correction may be impractical for large projects or in national emergency situations.

*HUD Response:* HUD appreciates the benefit mentioned by commenters of a clear dollar threshold or PHA discretionary amount but determines not to adopt the suggestion because the differing impact of a dollar threshold across markets with different local conditions will result in an inconsistent meaning of ''existing housing'' nationwide. HUD considered the suggestion to define ''existing housing'' based on cost or extent of work occurring shortly after contract execution. In this final rule, HUD adopts that suggestion in part. HUD defines ''existing housing'' based on the condition of the units at the proposal or project selection date and incorporates a requirement that the PHA determine, and the owner certify, the units will not need or undergo substantial improvement from the date of proposal submission or board resolution, as applicable, to two years after the HAP contract. In conjunction with this change, HUD codifies in this final rule complete standards for correction of deficiencies (see discussion of § 983.103 below) and substantial improvement (see discussion of § 983.212 below) following contract execution.

Alternative Definitions of Existing Housing

Commenters suggested that the standard should be a percentage of local rehabilitation or development costs or whether the apartment is occupied or available for occupancy. Another commenter supported the proposed definition of ''existing housing,'' but found the reliance on proposal selection date as impractical compared to using the HAP execution date because there can be a significant gap between selection and HAP execution. One commenter opposed the imposition of a bright line threshold that fails to account for PHA discretion and local circumstances as well as thresholds based on time or money because the test will affect project owners differently based on availability and costs of materials and labor associated with routine maintenance. Another commenter suggested that the standard for existing housing should be ''housing that does not need to be rehabilitated,'' which would require HUD to chart the cost threshold and number of PBV units in a development, and developments that must spend above the threshold to make PBV units HQS-compliant would not be considered ''existing housing.''

*HUD Response:* HUD does not adopt the suggestion to use a percentage of local costs in the definition out of concern that the approach may make housing type classification unpredictable over time and may require significant administrative burden to estimate costs in advance of work. HUD declines to adopt a standard that defines ''existing housing'' based on whether the unit is occupied or available for occupancy; HUD finds the former does not afford sufficient protection against assistance being provided to units that do not meet HQS and the latter is not sufficiently clear to be applied uniformly. In addition, HUD does not adopt the suggestion to use the contract execution date rather than the proposal or project selection date, as the PHA must establish the housing type well before the contract execution date to follow the appropriate pre-contract program requirements.

HUD believes the linkage in this final rule to a standard cure period addresses the concern regarding a bright line threshold. HUD generally agrees that the nature of existing housing should be ''housing that does not need to be rehabilitated,'' but has implemented this principle in a manner different from what the commenter suggests. HUD has in this final rule defined ''substantially comply'' based on the nature of the correction of HQS deficiencies—whether they require only repairs to the unit's current components or replacement of equipment and/or materials by items of substantially the same kind to correct—in addition to the likelihood of compliance with HQS within the standard cure period.

PHA Determination Whether a Project Will be Ready To Be Placed Under a HAP Contract

Commenters stated that PHAs should have discretion to determine whether a project is ready to be placed under a HAP contract with ''minimal delay'' because the PHA is best positioned to judge whether the owner will quickly complete repairs and make the determination consistent with PHAs' own policies regarding the time that may elapse between the initial inspection and the HAP contract's execution.

*HUD Response:* Upon consideration of comments, HUD finds that the timing of execution of the HAP contract is difficult to estimate based on condition of units alone, given the many factors impacting execution, and will not provide sufficient clarity to use the definition consistently. Therefore, HUD removes the proposed ''minimal delay'' element from the definition of ''existing housing'' in this final rule at § 983.3.

*Definition of ''Building''*

One commenter suggested that HUD define the word ''building'' under § 983.103(d), and specifically as it relates to conducting an inspection of 20 percent of a building's units. The commenter stated that while the definition of ''building'' may be obvious, the definition is obscure, and the commenter suggested changing ''building'' to ''project.''

*HUD Response:* HUD agrees with the commenter that the term ''building'' may not always be clear. Therefore, HUD adopts in § 982.4 the following definition: ''a structure with a roof and walls that contains one or more dwelling units.'' Where the term ''building'' is used regarding periodic inspection of a sample of units (now located in § 983.103(e)), HUD intends that the requirement apply to buildings, not projects. HUD believes that the sample should be drawn on a building basis to get a good cross-section of the condition of the units in a project. Further discussion of this matter is at 70 FR 59892, 59905 (Oct. 13, 2005).

*Definition of ''Areas Where Vouchers Are Difficult To Use''*

Give PHAs Discretion

Several commenters suggested HUD should allow PHAs to define areas where vouchers are ''difficult to use'' because PHAs can consider local and recent conditions and handle complex calculations.

*HUD Response:* HUD declines to give PHAs discretion to define areas where vouchers are ''difficult to use'' because

such an approach could lead to highly inconsistent application of the program and project caps across the country.

Opposition to Proposed Definition

A commenter warned that the proposed definition of ''difficult to use'' may inaccurately reflect the current status of rental markets at either end of the income spectrum and may insufficiently adjust if rapid market changes occur.

*HUD Response:* HUD determined that the proposed measure is appropriate given the targeted incomes that the voucher program is intended to serve. HUD agrees that FMRs may take time to adjust to market changes but determines the benefit of using FMR data, which is held to a high standard of accuracy, outweighs this concern. HUD continues its commitment to continually improving FMR calculations in order capture the most current market conditions.

Base on Vacancy Rates

Commenters supported HUD's proposal to define areas where vouchers are ''difficult to use'' based on vacancy rates. Some commenters stated that HUD should use a three or four percent or lower target vacancy percentage for metropolitan Fair Market Rent areas and use ZIP code areas to analyze vacancy rates and allow exceptions in areas with accurate data at lower levels, such as census tracts. A commenter noted that it would be beneficial to examine vacancy rates separated by bedroom size, since bedroom size may impact vacancy rates. One commenter opposed HUD defining ''difficult to use'' based on vacancy rates because of the challenges and inaccuracies behind identifying vacancy rates based on ZIP code.

*HUD Response:* HUD appreciates the commenters' support of HUD's proposal to define areas where vouchers are ''difficult to use'' based on vacancy rates. HUD considered a more restrictive target vacancy percentage as some commenters proposed but determined the proposed four percent threshold provides PHAs an appropriate level of discretion to respond to local conditions and is consistent with other uses of a vacancy threshold in HUD programs. HUD does not provide for additional definition on the basis of areas smaller than ZIP code or of bedroom size because such data are not consistently available. Determining vacancy rates based on ZIP code is currently possible using reliable and available data, so HUD maintains this change in this final rule.

Other Suggestions

A commenter suggested that HUD add three additional criteria to define areas where it is ''difficult to use'' vouchers: (1) in areas experiencing rapid rent appreciation as shown by increases in fair market rent, (2) areas with low vacancy rates, and (3) areas undergoing revitalization. The commenter pointed out that these additional criteria would allow PHAs to preserve affordability in rapidly changing areas as well as present residents with the ability to choose whether to move or remain in areas of opportunity when they may otherwise be priced out. Moreover, this commenter stated that HUD should consider areas with defined exception payment standards as ''difficult to use,'' and ''difficult to develop,'' because it consolidates efforts to improve fair housing opportunities. Another commenter recommended that HUD identify areas where costs are high relative to metropolitan area FMRs based on a median salary comparison to SAFMR because it would identify areas where rent dramatically increases, but salaries remain stagnant.

One commenter suggested that defining areas where vouchers are ''difficult to use'' should include a poverty threshold to avoid voucher concentrations in high-poverty areas. This commenter also stated that the Small Area FMR (SAFMR) standard is a good proxy for areas of opportunity. Another commenter expressed that another means to identify areas where vouchers are difficult to use is by comparing actual costs to the area's FMR, since using other parameters may be complex to calculate and labor-intensive.

*HUD Response:* This final rule incorporates into the definition of ''area where vouchers are difficult to use'' the proposed rule's measure of low vacancy rates. HUD reviewed the suggestion to add areas experiencing rapid rent appreciation and areas undergoing revitalization but determined that data on such measures are not available or updated frequently enough to be meaningful. HUD appreciates the benefit of preserving affordability in rapidly changing areas and allowing residents to remain in areas of opportunity but determined that the data limitation will require that PHAs explore use of the 20 percent program cap and other exceptions to the cap to meet these objectives. HUD disagrees that areas with exception payment standards in place should be incorporated into the definition, as exception payment standard use can reflect conditions beyond the sole criterion this definition is intended to reflect (whether vouchers are difficult to use) and their use in the definition would result in broad and inconsistent application of the program and project cap exceptions.

HUD appreciates the commenter's recommendation to incorporate high-cost areas but retains the proposed rule's definition because the criteria therein appear to provide adequate coverage of areas where vouchers are difficult to use. HUD intends to monitor the impact of this definition over time and consider this additional criterion for future rulemaking if the definition proves insufficient. HUD also declines to add a poverty threshold to this definition because the standards regarding deconcentration of poverty when siting PBV projects are adequately covered by existing requirements at § 983.55. HUD reviewed other methods to determine actual costs as recommended by commenters but determined none are available and verifiable in a manner adequate to be relied upon consistently on a national scale.

**18. Description of PBV Program (§ 983.5)**

*Operating Without an Agreement*

A commenter supported HUD's proposal to allow development without an Agreement to increase flexibility and reduce burdens on PBV developments. Other commenters suggested that HUD clearly state, potentially in the definition of ''newly constructed,'' that a PHA may enter an Agreement contract with prospective units of a property under construction.

*HUD Response:* HUD appreciates the positive comment and discusses further comments on the topic of development without an Agreement in the discussion of § 983.154 later in this preamble. The comments concerning the definition of ''newly constructed'' have been addressed in the discussion of § 983.3 earlier in this preamble.

**19. Maximum Amount of PBV Assistance (§ 983.6)**

*Outline Calculation Situations*

One commenter requested that HUD outline in the preamble the situations in which a PHA would have to conduct a calculation.

*HUD Response:* In this final rule at § 983.58, HUD clarifies that the PHA must calculate the number of authorized voucher units that it is permitted to project-base in accordance with § 983.6. The calculation must include a determination of the amount of budget authority that it has available for

project-basing in accordance with § 983.5(b). The PHA's calculations must occur before it issues a request for proposal in accordance with § 983.51(b)(1), makes a selection based on a previous competition in accordance with § 983.51(b)(2), amends an existing HAP contract to add units in accordance with § 983.207(b), or noncompetitively selects a project in accordance with § 983.51(c). Further, PHAs must perform an analysis of the impact if project-basing 50 percent or more of the units under the Consolidated Annual Contributions Contract (ACC). The analysis should consider the ability of the PHA to meet the needs of the community across its tenant-based and project-based voucher portfolio, including the impact on, among others, families on the waiting list and eligible PBV families that wish to move under § 983.261.

*Reducing Units*

A commenter recommended that a PHA should never be required to reduce units under an Agreement or HAP contract but should only be unable to enter new commitments, Agreements, or HAP contracts until they are back below the cap. This commenter stated that owners and PHAs need stability in the PBV program and should not be subject to reduction after Agreements or HAP contracts are entered. Therefore, this commenter recommended that HUD strike the first clause of § 983.6(a)(3), limiting the paragraph to paragraphs (a)(1) and (2) of the same section.

*HUD Response:* HUD has reviewed the comment and determined that this final rule already affords relief when a PHA would otherwise be out of compliance with the statutory program cap simply because of a change in the number of authorized voucher units. In such cases, this final rule maintains the proposed rule provision that states the PHA is not required to reduce the number of units to which it has committed PBV assistance under an Agreement or HAP contract. Notwithstanding, this final rule prohibits the PHA from adding units to PBV HAP contracts or entering into new Agreements or HAP contracts (except for HAP contracts resulting from Agreements entered into before the reduction of authorized units or April 18, 2017, as applicable). Further, the PHA could add units if the unit meets one of the increased cap exceptions and adding the unit does not place the PHA outside of the program cap or increased program cap. The same principle applies where the noncompliance is simply the result of the change in statute (from budget authority to authorized units). Conversely, HUD has an obligation to ensure that statutory requirements are met, and, therefore, has no discretion to allow for the same policy where the noncompliance with the statutory requirement is based on PHA error and under this final rule, HUD will not strike the first clause of § 983.6(a)(3). HUD takes this opportunity, however, to clarify that the PHA may also add units in the instances described above, if the unit does not count toward the program cap under the requirements of § 983.59.

*Technical Edit*

A commenter recommended using ''authorized units'' instead of ''budget authority'' in § 983.6(c).

*HUD Response:* HUD reviewed the comment and determined that the reference is accurate and the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available.

*The Census Tract Data*

A commenter stated that the use of census tract data ''as determined by HUD'' in §§ 983.6(d)(2)(iv) and 983.54(b)(1) is unclear whether it is determined by census data or other metrics, as the commenter believed it would be determined by census data, but the text suggests HUD may seek to use other metrics.

*HUD Response:* This final rule maintains HUD discretion to determine the most appropriate data source and metric to use in making this determination. HUD will ensure that stakeholders are notified and fully informed once such determinations are made. HUD notes that these provisions have now moved to the definition of ''area where vouchers are difficult to use'' in § 983.3.

*Definition of Veterans*

Commenters objected to HUD excluding dishonorably discharged veterans in its proposed definition of ''veterans'' and find it is counter to both other HUD programs and Congressional intent, because the proposed definition undermines local efforts to end veteran homelessness by denying assistance to dishonorably discharged veterans, who are likely to face barriers to stable housing. A commenter suggested that HUD should allow PHAs to define ''families with veterans.''

*HUD Response:* Under this final rule, HUD makes the change commenters suggested in defining veteran, solely for purposes of applying the additional 10 percent veteran exception to the PBV program cap, to ''a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom.'' HUD determines that the change from the proposed rule definition is likely to better prevent and address homelessness and unstable housing among those who served and their families by providing PHAs an option to attach more PBV assistance to projects serving this population. HUD does not make the change suggested by a commenter to give PHAs discretion to establish the definition of ''veteran'' for this purpose. HUD is concerned about the different treatment of applicants that would result from divergent definitions around the country.

*Supportive Services Limitation*

One commenter disagreed with HUD's proposal to continue its existing policy that allows PHAs to exceed the 20 percent limitation on project-basing of authorized voucher units for ''units that provide supportive housing to persons with disabilities or elderly persons'' only when ''the project makes supportive services available for all the assisted families in the project.'' The commenter recommended that the statutory requirement to offer services to ''all the assisted families in the project'' be removed from this final rule.

*HUD Response:* HUD appreciates the commenter's suggestion; however, HUD is unable to implement such a change through regulation because it would be in conflict with the current statutory language under section 106(a)(2) of HOTMA, which amends section 8(o)(13)(B) of the 1937 Act. Under HOTMA, a PHA may project-base an additional 10 percent of its ACC authorized units above the 20 percent program limit, provided the additional units fall into one of the eligible exception categories, one of which is providing supportive housing to persons with disabilities or elderly persons. The use of the term ''supportive housing'' in section 8(o)(13)(B) of the 1937 Act means that the project must be making the supportive services available for all the assisted families in the project, not just individual families.

*Survivors of Domestic Violence*

A commenter suggested including survivors of domestic violence, sexual assault, and stalking to the list of circumstances under which PBV units may exceed the cap.

*HUD Response:* HUD appreciates the commenter's suggestion; however, HUD is unable to implement such a change through regulation because it would be

in conflict with the current statutory language.

**20. PBV Provisions in the Administrative Plan (§ 983.10)**

A commenter stated that § 983.10(a) is unclear in its requirements and recommended this paragraph be guidance instead of a requirement. This commenter also suggested HUD clarify in § 983.10(b)(7)(ii) that PHAs can use a combination of general, site-based, and owner-maintained waiting lists, as determined by the PHA's discretion. Finally, this commenter suggested that HUD create a section similar to § 983.10 for PHA Plan requirements or, if already identified in part 903, create a cross-reference, because combining requirements makes monitoring and compliance easier.

*HUD Response:* HUD's longstanding requirement has been that the Administrative Plan must state PHA policy on matters for which the PHA has discretion to establish local policies. As provided in § 983.2, the HCV program regulation governing Administrative Plans (§ 982.54) applies to the PBV program. Section 983.10, as amended in this final rule, provides a list of additional Administrative Plan policies that a PHA must also adopt, to the extent applicable, if it has implemented or plans to implement a PBV program. HUD has reviewed the language of § 983.10(a) in response to this comment and edited it to better explain these requirements.

HUD's position is that § 983.251(c) is the appropriate location to explain PHAs' options to use a combination of general, site-based, and owner-maintained waiting lists. Section 983.10(b)(7) merely requires the PHA to include in the Administrative Plan a description of the waiting list policies the PHA has chosen to adopt; it does not impose a limitation different from § 983.251(c). To prevent any potential confusion, HUD revised this section to limit the discussion of each PHA policy in § 983.10 to a short description only. PHAs must look to the cross-referenced section for complete information about the contents of and requirements for each PHA policy.

As provided in § 983.2, the HCV program regulation explaining the relationship between the Administrative Plan and PHA Plan (§ 982.54(b)) applies to the PBV program. PHA Plan requirements themselves are contained in 24 CFR part 903 and HUD finds that repeating them in part 983 would be duplicative. However, HUD has clarified in § 983.3(b) that the definition of PHA Plan in § 982.4(b), which cross-references part 903, applies to the PBV program, to address the commenter's concern.

**21. Prohibition of Excess Public Assistance (§ 983.11)**

*Subsidy Layering, Standards, and Review*

Several commenters opposed HUD's proposal to permit subsidy layering review upon rehabilitation or development activity. Commenters found the change administratively burdensome and recommended that subsidy layering reviews be limited to additional Federal resources for operating assistance or recommended that SLR only be applied at the time of signing an Agreement. Another commenter objected to the language in § 983.12(d)(1) (§ 983.11(d)(1) in this final rule) as harmfully broadening subsidy layering requirements, which is not done in other programs and, historically in PBV and Project Based Rental Assistance, has only been required when the PBVs are awarded, not for any subsequent rehabilitation or assistance. The commenter stated that this will be administratively burdensome for owners and PHAs, especially given the ninety-day plus review periods.

A commenter suggested that HUD clarify that rehabilitation projects which may be done without any additional funding, and which are unlikely to result in a rent increase, are exempt from the subsidy layering requirements. A commenter questioned whether HUD has the capacity and expertise to conduct the additional subsidy layering reviews that would be required by the proposed regulations. Another commenter stated that HUD's Regulatory Impact Analysis (RIA) is silent with respect to subsidy layering reviews.

*HUD Response:* HUD has considered the comments and agrees that it would be unnecessarily administratively burdensome for a new SLR to be performed every time any amount of additional related assistance is added to a newly constructed or rehabilitated project after the HAP contract is effective. As such, HUD has revised the rule to clarify that the criteria for whether the addition of assistance requires a new SLR will continue to be located in the PBV SLR Administrative Guidelines published in the **Federal Register**. With regard to the concern that § 983.11(d)(1) broadens subsidy layering requirements, HUD clarifies that it is and has long been a requirement in the PBV HAP contract for newly constructed and rehabilitated housing that the owner must disclose public assistance that is made available during the term of the HAP contract. This requirement was reinforced and further explained in 75 FR 39561 (Jul. 9, 2010), 79 FR 57955 (Sep. 26, 2014), 85 FR 12001 (Feb. 28, 2020), and the most recently applicable notice at 88 FR 15443 (Mar. 13, 2023).

Section 983.153(b)(1) clarifies that an SLR is required for rehabilitated housing projects only when housing assistance payment subsidy under the PBV program is combined with other governmental housing assistance from Federal, State, or local agencies. HUD confirms it has the capacity and expertise to conduct the required SLRs. HUD's statement in the RIA was that changes that are merely codifications of current HUD practice would not be analyzed. As discussed above, this final rule aligns with the policy in effect in the most recently applicable SLR Guidelines.

**22. Proposal and Project Selection Procedures (§ 983.51)**

*Responses to Question 15 Regarding Additional Exemptions*

Several commenters supported HUD exempting the placement of PBVs that are used to replace previously federally assisted or rent-restricted property from the competitive selection requirements.

One commenter stated that PHAs and project owners of affordable housing units should not have to compete with private owners to preserve existing units through on-site or off-site development. This commenter expressed that PHAs and owners can use the voucher commitment to obtain additional financing to rehabilitate and preserve the affordable housing units, many of which have struggled due to insufficient appropriations, below-market rents, and unfunded capital needs. Another commenter stated that HUD should allow exceptions to the competitive selection process in housing-emergency situations, such as when the PHA is part of a local partnership to save Naturally Occurring Affordable Housing (NOAH) or to relieve homeless encampments.

Other commenters suggested that HUD exempt tax credit properties where the compliance period has come to an end to help protect the affordability of the units. One commenter stated that HUD should add Project-based Veterans Affairs Supportive Housing (VASH) vouchers on the condition that the local Veteran Affairs Office supports doing so. One commenter stated that HUD should remove the competitive selection requirements when PBVs are submitted with an application for a LIHTC credit, to ease the ability of entities to submit

LIHTC proposals. Another commenter stated that PBVs in income-restricted developments create a mix of incomes while providing financial stability for affordable developments.

*HUD Response:* HUD considered the comments and determined an additional exemption category should be added at § 983.51(c)(3) to include PHA-owned units as defined under § 982.4. The exemption from the proposed rule requires for a PHA to be ''engaged in an initiative to improve, develop, or replace a public housing property or site,'' but in all cases HUD means housing assisted under section 9 of the 1937 Act when referring to public housing. Adding PHA-owned units to the exemption will streamline and support a PHA's ability to develop long term affordable units in its community.

If a PHA has identified preserving affordable housing or serving veterans and the homeless as a local priority, the PHA can incorporate that goal into their RFP or strategically utilize other funding competitions to select such projects. As a limited resource, PBV should be used to address local needs and priorities using a method that is intended to identify the best project.

*Previous Competition Requirement*

A commenter encouraged HUD to remove the requirement that projects be selected solely based on previous competition, if the previous competition did not involve consideration of the PBVs, because most tax credit and other funding selections will require a provisional commitment of PBV assistance. The commenter warned that this puts PHAs and project owners in an untenable position, since they cannot compete for vouchers without tax credits, and PHAs cannot compete for tax credits without PBV assistance.

*HUD Response:* HUD understands the limitations presented by the commentor because of the provision that prohibits a PHA from selecting a housing assistance proposal that included any consideration that the project would receive PBV assistance; however, this provision maintains the integrity of a competitive selection method and will not be revised in this final rule.

Language was added to § 983.51(b)(1) clarifying that a PHA may establish selection procedures that combine or are in conjunction with other Federal, State, or local government housing assistance, community development, or supportive services competitive selection processes, and HUD intends to provide future guidance to support PHAs in using these methods in combination with other funding sources.

*Clarification Request*

A commenter suggested removing ''regard to,'' from § 983.51(c)(1) and (2) and modifying the statement, ''newly developed or replacement housing,'' in § 983.51(c)(1) to ''newly developed, rehabilitated, or replacement housing.''

*HUD Response:* HUD agrees with the commenter and has removed the language ''regard to'' and revised the language ''newly developed or replacement housing.'' Additional language revisions were made to § 983.51(c) for better readability.

**23. Prohibition of Assistance for Ineligible Units (§ 983.52)**

One commenter recommended deleting § 983.52(d). In the alternative, the commenter urged HUD to revise the requirement from applying upon ''proposal submission'' to only be triggered following ''proposal selection.'' According to the commenter, if the owner submits a proposal and that proposal is not successful (perhaps because there are not enough PBVs at that time or it is simply not awarded), this language will foreclose the owner's future participation in the PBV program.

*HUD Response:* HUD has retained proposed § 983.52(d) in this final rule. The provision has not changed from the requirement in place under the prior regulation, except with respect to units developed without the use of an Agreement and rehabilitated projects developed after HAP contract execution, and it continues to be necessary to ensure critical development requirements are followed. HUD declines to amend the language to require applicability only after proposal selection, because doing so could result in development occurring prior to completion of critical development requirements. HUD clarifies, however, that if the PHA does not select the project for PBVs, the project is not subject to program requirements and the provision does not apply.

HUD also takes this opportunity to amend the prohibition on using PBVs in manufactured homes. Under this final rule, PHAs may use PBVs in manufactured homes so long as they are permanently affixed to a permanent foundation and the owner owns the land on which the manufactured home is located, as these are necessary preconditions for compliance with the PBV program rules (all standard PBV rules continue to apply). Using PBVs in manufactured homes also means that the manufactured home can be made accessible in accordance with HUD's accessibility requirements, including requirements under HUD's Section 504 requirements at 24 CFR part 8. HUD finds this change necessary given the changes in industry practice since the rule was written.

**24. Cap on Number of PBV Units in Each Project (§ 983.54)**

*Question 16: Whether the proposed rule sufficiently addressed the project cap requirements in relation to a unit losing its excepted status?*

One commenter supported HUD's changes as beneficial for families and PHAs. Other commenters suggested that HUD permit a continued excepted status for families that lose their excepted status, whether due to the death of an elderly family member or other reasons. Commenters warned that removing the unit could have negative financial implications especially when the project has been underwritten against the number of subsidized units. A commenter stated that this would align HUD with PIH Notice 2017–21, because this would allow units to remain excepted until turnover if the family no longer qualifies for the exception through no fault of its own.

One commenter proposed that HUD adopt a ''next available unit'' rule, which would allow a PHA and project owner to continue counting units as excepted so long as the next available unit is subsequently leased to an eligible family at turnover. In the alternative, this commenter suggested a cure period of 90 days, in which the project owner and PHA could avoid default under the HAP contract while assessing options, ensuring compliance, amending the HAP contract, and engaging in other related tasks. Another commenter suggested that PHAs should enforce families' excepted status without HUD intervention and that a de minimis standard should be set so a minimal number of units can be out of excepted status without changes needed to the PBV contract.

*HUD Response:* HUD reviewed the comment and determined that § 983.262 of this final rule already affords discretion to PHAs to allow the elderly exception to continue to apply to the unit where, through circumstances beyond control of the family (*e.g.,* death of the elderly family member, long term or permanent hospitalization, or nursing care), the elderly family member no longer resides in the unit. Further, should HUD adopt a ''next available unit'' policy, such a policy would be at odds with statutory requirements, as would be the ''de minimis'' standard suggested by another commenter.

*Question 17: Whether other options not considered by the proposed rule should be available to the PHA when a unit loses its excepted status?*

Alternative Options

A commenter noted that no other options need to be considered. Another commenter suggested unit substitution as an option to PHAs when a unit loses its excepted status.

*HUD Response*: HUD has reviewed the comment and has determined that § 983.262 of the proposed rule already offers unit substitution as an option.

HCV Conversion

A commenter suggested PHAs have discretion, but not the obligation, to provide families with an HCV because requiring PHAs to provide all families in formerly excepted units with an HCV could create a loophole where families who are initially eligible for the excepted unit move in and promptly remove a household member from the lease to prematurely access an HCV. One commenter expressed that the option to temporarily convert to HCV seems burdensome to PHAs. Another commenter suggested that for § 983.262(f) (now moved to § 983.262(b)(4) in this final rule), HUD should require the owner to accept the tenant-based voucher issued to the family if the family chooses to remain or is unable to locate another suitable unit.

*HUD Response:* HUD appreciates the perspective provided by commenters concerning the option to temporarily remove the unit from the PBV HAP contract and provide the family with a tenant-based voucher when a unit loses its excepted status; however, under the proposed rule, this was meant to be one of several options that a PHA could use to manage the loss of the exception. Additionally, given the discretion provided at § 983.262(c)(3) and (d)(1)–(2), HUD expects a unit losing its excepted status not to be a frequent occurrence. Additionally, there is no reason to assume that families will start removing members from the lease just to receive a tenant-based voucher.

Combining Exception Categories

One commenter encouraged HUD to retain references to combining exception categories in a project and to permit the designation of units as elderly or eligible for supportive services in projects that are exempt from the income-mixing requirement. This commenter stated that HUD is not statutorily required to prohibit PHAs from designating units under the HAP contract once the income-mixing requirement does not apply, due to reasons beyond income-mixing, such as complying with various set asides and pointing allocations in LIHTC applications or seeking to convert existing elderly designated public housing to PBV.

*HUD Response:* HUD agrees with commenters that reinstating § 983.56(b)(3) in this final rule would be helpful. While the provision was initially removed because the supportive services exception requires that supportive services are made available to all PBV families in the project, HUD agrees that this ''combining exception categories'' provision is not at odds with that requirement and re-inserting it makes clear that PHAs may designate units in the HAP contract for specific exceptions. This final rule restores the provision at § 983.54(c)(1) with textual changes to clarify that the provision allows that some units may be under different exception or exclusion categories than others in a single project. HUD disagrees with the comment that a unit may be excepted when it is already excluded. Where a unit is excluded, the statute provides no basis for an additional exception.

*Supportive Services*

One commenter supported HUD's emphasis that the use of supportive services is voluntary. Another commenter thought that families receiving drug and alcohol treatment as a condition of living in an excepted unit should agree to supportive services, if needed, and to comply with PBV regulations including following their supportive service plan and timely paying their rent.

*HUD Response:* HUD does not make participation in supportive services mandatory and the statute conveys that participation in such supportive services is voluntary.

*Question 18: Does the regulation clearly convey how the Family Self-Sufficiency (FSS) program may be used in meeting the supportive services exception?*

Many commenters stated that the proposed rule is clear on how FSS can be used in meeting supportive services. A commenter supported the change that prohibits owners from terminating a family's lease for failure to complete an FSS contract without good cause. In response to question 18, one commenter found the proposed rule unclear on whether ''supportive services used in connection to the FSS program'' could be the sole services offered to families to meet the exception. Another commenter suggested putting the proposed rule on hold until HUD finalizes the FSS proposed rule [16] to avoid any potential conflict between both rules.

*HUD Response:* While HUD appreciates the comments received concerning the clarity of the FSS provisions, upon reflection, HUD has determined that a PHA that administers an FSS program can choose to solely use FSS in meeting the supportive services exception. This is because PBV families are eligible to enroll in FSS (and, therefore, eligible for the supportive services that are made available through the FSS program) and enrollment in FSS is voluntary. However, if the family fails to comply, without good cause, with the requirements of the FSS contract of participation, the family may be terminated from FSS. If the family's FSS contract of participation is terminated, the PBV unit would lose its excepted status if the PHA solely uses FSS in meeting the supportive services exception and the PHA policy in the FSS Action Plan prohibits the re-enrollment of all members of a household that enrolled in FSS but did not complete the program successfully (were terminated from FSS or left the program voluntarily); as provided in § 983.262(d)(3)(iii) of this final rule, the unit loses its excepted status only if the entire family becomes ineligible for all supportive services for a reason other than that the family successfully completed the services.

PHAs that choose to rely solely on FSS to meet the supportive services exception must, therefore, plan carefully for such an eventuality. The PHA may consider the following in making a determination on whether to rely solely on FSS: (a) FSS graduation rates, because if the PHA has low FSS graduation rates and a policy prohibiting the re-enrollment of previous FSS participants, this could potentially result in a high number of PBV units losing their excepted status; and (b) availability of an FSS slot at the time of the PBV family's request for enrollment since the supportive services must be made available to the family within a reasonable time, as defined by the PHA but not to exceed 120 calendar days from the family's request, for the exception to apply. Further, the PHA could avoid the potential loss of the PBV unit's excepted status by making the supportive services used in connection with the FSS program available to non-FSS PBV families at the project. Notwithstanding, PHAs cannot use the FSS grant-funded coordinators to serve non-FSS PBV families but non-

[16] 85 FR 59234 (Sep. 21, 2020).

FSS services can serve non-FSS PBV families.

With respect to the commenter's suggestion to put this proposed rule on hold, the FSS rule was published on May 17, 2022, with an effective date of June 16, 2022 (compliance with the FSS rule was required no later than November 14, 2022). As a result, HUD can ensure all HOTMA final rule provisions are aligned with the FSS rule to avoid any potential conflict between both rules. HUD has also taken this opportunity to clarify that, to meet the exception, the supportive services must be made available to the family within a reasonable time, as defined by the PHA but not to exceed 120 calendar days from the family's request.

**25. Site Selection Standards (§ 983.55)**

Another commenter supported permitting PHAs to use project-based vouchers in new construction developments in areas with poverty rates greater than 20 percent, but suggested HUD does not require the PHA to have gathered five years of information regarding poverty rates first.

*HUD Response:* HUD appreciates the commenter's support pertaining to permitting PHAs to use project-based vouchers in new construction developments in areas with poverty rates greater than 20 percent. In this final rule, HUD continues to require the PHA to have gathered five years of information regarding poverty rates first, which must be consistent with the PHA Plan under 24 CFR part 903 and the PHA Administrative Plan, because HUD believes doing so will improve compliance with the requirement at section 8(o)(13)(c)(ii) of the 1937 Act that the PBV HAP contract be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

**26. Environmental Review (§ 983.56)**

*Support for the Proposed Rule*

One commenter supported an environmental review exception for existing housing that is formerly federally assisted property. Another agreed with the proposed rule but suggested broadening the definition of existing housing to encompass more properties.

*HUD Response:* HUD has not adopted this aspect of the proposed rule, as further explained below in this discussion of comments regarding § 983.56.

*Responses to Questions 19 and 20 Regarding Evidence of Past Environmental Reviews*

Commenters warned that requiring owners to demonstrate that an environmental review was previously conducted would be an administrative burden. A commenter stated that it is unreasonable to require that new owners of older buildings provide environmental review documentation. Commenters stated that an exemption should be allowed even if documentation of prior review is unavailable. Commenters also stated that HUD should infer that those previous federally assisted projects must have conducted an environmental review and HUD should assume that the review was properly conducted and met environmental review requirements especially if the owner is in good standing with HUD. A commenter suggested an owner should be allowed to self-certify that the property was formerly federally assisted. Another commenter expressed that Congress set a bright line standard to exempt all existing housing from demonstrating that an environmental review was previously conducted, and, as such, there should be a rebuttable presumption that the existing housing received a proper environmental review, unless HUD can show otherwise. A commenter stated that if the PHA's environmental review records are unavailable, then a new review should be conducted.

*HUD Response:* HUD agrees that requiring owners to demonstrate that an environmental review was previously conducted would have presented some administrative burden and has removed this requirement.

HUD Should Exempt All Existing Housing

Commenters expressed that HUD should exempt all existing housing that only receives HAP Federal assistance. A commenter suggested this exemption should not expire. Commenters stated that the statute clearly provides an exemption broader than HUD's proposal and noted legislative history shows that Congress intended such an exemption. A commenter stated that HUD's citation of Church of the Holy Trinity v. United States, 143 U.S. 457 (1892), as support for the proposed rule's environmental review position is inapplicable because there is no evidence that a plain reading of the text would be in contravention of Congress's intent that site-based housing comply with environmental review requirements. This commenter expressed that the HUD's Regulatory Impact Assessment concedes that the Housing and Economic Recovery Act (HERA) and HOTMA requirements contradict Congressional support for environmental review.

One commenter stated that HUD should exempt existing housing to prioritize environmental review for new construction and rehabilitation projects because they pose the greatest environmental risk. Another commenter stated that this requirement would do nothing to protect tenants from adverse environmental conditions. Another commenter found HUD's proposal legally questionable and unnecessary to protect subsidized tenants from living in areas with adverse environmental conditions. Commenters suggested that HUD allow exemption of existing housing from environmental review if it meets the criteria for environmental acceptability under § 982.401(l)(2). Another commenter also questioned HUD's statutory authority to impose an environmental review requirement on project owners of existing structures and suggested that HUD eliminate this requirement because it is significantly burdensome on responsible entities, PHAs, and project owners as the document retention policies adopted by responsible entities are not uniform.

*HUD Response:* HUD agrees that requiring owners to submit past reports of environmental reviews may result in a burden to the owner without reducing the risk of unhealthy environmental conditions. Upon consideration of this and other comments, HUD determines that revising the rule to provide that environmental review is not required to be undertaken before entering into a HAP contract for existing housing, except where the review is required by law or regulation relating to funding other than PBV housing assistance payments, best balances HOTMA's textual change with Congress's continuing emphasis on the importance of Federal assistance being used in an environmentally sound manner. HUD agrees that existing housing projects pose lesser environmental risk than newly constructed and rehabilitated projects given that the existing housing structures at issue are not altered, though HUD recognizes existing housing is not without risk. HUD agrees with commenters that compliance with standards for environmental acceptability as part of the review of site selection standards in § 983.55 (formerly under § 982.401(l)(2)) can contribute to the mitigation of environmental harm to and the risk of exposure to adverse environmental conditions in existing housing.

Requirements Following Contract Effective Date

A commenter stated that adding units generally does not create an environmental impact. The commenter encouraged HUD to provide technical and financial assistance to responsible entities and PHAs if HUD requires an environmental review for a project that seeks to add units to an existing HAP contract that has already undergone review, to ensure sufficient capacity and expertise. Another commenter suggested that HUD should not require review at the five-year review period if environmental conditions have not changed in the intervening years.

*HUD Response:* HUD agrees that adding units generally does not have an environmental impact. PBV regulations do not require review every five years nor was such a requirement proposed. HUD appreciates the comment encouraging technical and financial assistance to responsible entities and PHAs. HUD intends to provide additional technical assistance regarding changes to the PBV program following publication of this final rule. HUD will consider the need for financial assistance in existing HUD programs and any relevant new funding opportunities that become available.

Allow Alternatives

Commenters supported the current environmental review requirements, and requested HUD allow acceptable alternatives, such as an abbreviated review or other local environmental review reports.

*HUD Response:* HUD considered whether the regulation previously in effect should be amended to allow for alternatives, but determined that such an approach would not be appropriate for newly constructed or rehabilitated housing, which are subject to environmental review under law, and that requiring no environmental review before entering into a HAP contract for existing housing is a better approach, given that the housing remains as it was prior to receiving PBV assistance and assisted families remain protected by HQS.

Require Environmental Review Near Documented Hazard Sites

One commenter recommended that existing housing projects be required to undergo environmental review if the site is located near a documented hazard site and suggested that HUD require PHAs to notify tenants and update HQS inspection lists when a housing project is close to a Superfund site or on the National Priorities List.

*HUD Response:* HUD finds that it would be impractical to require environmental review when environmental issues are near the housing because, in many cases, the issue would become known only through environmental review and in the remaining cases, the PHA would be prohibited from selecting any such site if it presented a hazard in accordance with site selection standards.

Use HEROS To Track Environmental Reviews

One commenter encouraged HUD to continue tracking environmental reviews via HUD's Environmental Review Online System (HEROS).

*HUD Response:* HUD intends to continue use of HEROS.

Technical Edit Suggestions

A commenter stated that § 983.56 should refer to parts 50 and 58 instead of summarizing the requirements to prevent inconsistencies. This commenter also stated that if there are differences between parts 50 and 58, the regulations should identify the deviations. This commenter further suggested that HUD revise § 983.56(d)(2) to read, ''The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has either issued authority to use grant funds or Letter to Proceed.'' The commenter recommended revising § 983.56(e) to ensure consistent use of terminology with part 58. The commenter additionally expressed that § 983.56(f) is inapplicable to HUD, because PHAs cannot direct HUD's compliance with its own requirements. Another commenter suggested HUD clarify that a transfer of ownership of a property should not impact the definition of existing housing for environmental review purposes.

*HUD Response:* In this final rule, HUD amended some of the language of proposed § 983.56 to ensure there were no inconsistencies with parts 50 and 58. HUD amends paragraph (f) to better reflect part 50 and 58 requirements and paragraph (d)(2) to clarify the applicability of the Letter to Proceed. HUD does not find clarification regarding transfer of ownership to be necessary, as the definition of existing housing is clear that the condition of the units, rather than the ownership of the units, is the relevant criterion, and the environmental review regulation clearly provides that no environmental review is required before entering into a HAP contract for existing housing.

Expand Definition To Match PIH Notice

A commenter suggested expanding the definition of existing housing to include the entirety of the PIH Notice 2016–22 definition, which ''clarifies the applicability of environmental reviews under 24 CFR parts 50 and 58 to all PHA activities at project site(s) assisted or to be assisted by HUD.''

*HUD Response:* HUD has determined to change the requirements for environmental review for the reasons explained above in this discussion of comments regarding § 983.56; upon the effective date of this final rule, portions of PIH Notice 2016–22 relating to PBV will become obsolete. HUD intends to issue guidance replacing PIH Notice 2016–22.

Change the Deadline for Submitting an Environmental Review

A commenter suggested that HUD allow two years to write an environmental review.

*HUD Response:* HUD determined that procedural changes to the manner in which HUD or a responsible entity conducts environmental reviews are beyond the scope of this rulemaking.

**Question 21: Time Limit for Accepting Previously Assisted Properties' Environmental Reviews**

Some commenters stated that there should be no time limit for when prior environmental reviews must have been conducted to be accepted for purposes of the exemption if no changes occurred during the intervening years. Other commenters suggested time ranges. One commenter suggested an environmental review for federally assisted property that has undergone significant work or rehabilitation in the past ten years. Another commenter objected to HUD establishing a time limit but suggested a review if the property has changed use. A commenter suggested every thirty years to remain coterminous with early PBV HAP contracts. Another commenter recommended every five years consistent with HUD's general recommendation. One commenter expressed that there should be a ten-year limit for the exemption since neighborhoods often change on a decadal scale, and another commenter stated that time limits should be tied to past evolution of the rule, rather than an arbitrary period.

*HUD Response:* HUD does not proceed with the proposed reliance on prior environmental reviews in this final rule for the reasons explained above in this discussion of comments regarding § 983.56, and therefore does not adopt any time limit for prior environmental reviews.

*Question 22: Alternative Approaches To Conducting NEPA Reviews*

Commenters stated that no national standard would be an adequate substitute for the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) review. One commenter expressed that most lending institutions will require an American Society for Testing and Materials (ASTM) Phase I site assessment but believed this would not be adequate because most will not include review of historic building elements, endangered species, noise, airport waste storage and groundwater flow. Some commenters suggested that HUD allow projects to use local requirements to conduct environmental reviews because most local jurisdictions have rigorous environmental review requirements.

*HUD Response:* HUD appreciates the examples of environmental standards other than Federal environmental review provided by commenters and the discussion of the limitations of those standards. HUD finds that none of the examples provided are easily determined to address the same criteria as Federal environmental review nor are they uniformly applicable on a national basis. HUD appreciates that many projects will be subject to these alternative standards and expects PHAs will thoroughly consider the results of reviews undertaken in response to lender or local requirements, including whether the results impact the PHA's site selection determination.

**27. PHA-Owned Units (§ 983.57)**

A commenter stated that it is unclear the conflict HUD is attempting to avoid by requiring independent entity oversight of development activity. Another commenter suggested that the PHA plan should contain details about the rights and obligations of the independent entity with respect to both the PHA and the tenants, and that HUD should require that applicants and tenants receive a written disclosure explaining: (1) the relationship between the PHA and independent entity; (2) contact information for the independent entity; (3) what rights the tenants may have; and (4) what to do in the case of a complaint. That same commenter stated that special care is needed to achieve the intended quality results from PBV investments, suggesting that HUD should ensure that PHA affiliate-owned PBV units receive adequate independent oversight—including compliance with HQS and civil rights obligations—by another public entity or HUD.

*HUD Response:* HUD maintains the position that the PHA cannot perform any function that would present a clear conflict (ensuring compliance with selection process, inspections and rent setting) for units they own. 42 U.S.C. 1437f(o)(11) requires that the unit of general local government or a HUD-approved independent entity perform inspections and rent determinations for any PHA-owned units. When the owner carries out development activity under § 983.152 or substantial improvement under §§ 983.207(d) or 983.212, the independent entity is required to review the evidence and work completion certification submitted by the owner in accordance with § 983.155(b) and determine if the units are in complete accordance with § 983.156. This is an inspection function. To assist independent entities in carrying out these inspection responsibilities and avoid further conflicts, one function was added to § 983.57, requiring the independent entity to approve substantial improvement on units under a HAP contract in accordance with § 983.212 (which was § 983.157 in the proposed rule).

HUD does not believe it is necessary to add additional disclosures. When a family is accepted into the PBV program, § 983.252 requires the PHA to conduct an oral briefing and provide a written information packet. Although the topics listed in the comments are not explicitly covered in the rule, HUD believes that many of these items would be covered in meeting the requirements at § 983.252, such as how the program works and family and owner responsibilities. Additionally, § 982.352(b) sets conditions on assisted units that are PHA-owned, including that the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease; the PHA-owned unit must be freely selected by the family, without PHA pressure or steering; and the PHA must obtain the services of an independent entity.

**28. Units Excepted From Program Cap and Project Cap (§ 983.59)**

*Question 23: Should PHAs that wish to PBV over a certain number threshold be required to analyze the impact on the availability of vouchers and demonstrate that they will still have sufficient tenant-based vouchers available within a reasonable period of time for eligible PBV families that wish to move?*

Some commenters disagreed with a cap on the number of PBVs a PHA can use based on the number of available HCVs. Commenters supported PHAs allocating PBVs and tenant-based vouchers (TBVs) based on local conditions, which some noted as Congressional intent for PHAs. One commenter expressed that HUD lacks the statutory authority to restrict a PHA's ability to project-base vouchers. This commenter stated that HUD's concerns about unintended consequences of cap exceptions are unfounded, given studies finding that Moving to Work (MTW) agencies usually fall within statutory program caps, and PHAs already consider the availability of vouchers due to families' right to move. The commenter further criticized HUD's analysis requirement of available vouchers for eligible PBV families as an unfunded mandate and duplicative of existing efforts. This commenter also recommended that the list of formerly assisted housing excluded from the portfolio cap should include HOME, and that replacement units excluded from the portfolio cap should include off-site replacement units, to enable owners and PHAs to site replacement housing in high opportunity areas, low vacancy areas, and areas outside of minority concentrations, which are locations that HUD has prioritized as important fair housing goals and has recognized as being better for the residents. The commenter further suggested that, in the case of newly constructed units developed to replace units that meet the criteria of § 983.59(b), units should be excluded even if the replacement units are built on a different site and the requirement at proposed § 983.59(d)(2) should require that the identification of the housing as replacement housing occur prior to PBV award rather than prior to demolition.

Commenters recommended that HUD establish an overall hard cap of 50 percent of vouchers, with exceptions to allow PHAs to project-base vouchers if local conditions warrant. Another commenter preferred PBV assistance over tenant-based assistance because it eliminates the barriers to lease from a private landlord in the open rental market. A commenter suggested the threshold at which the PHA or HUD should focus on the impact of providing PBV families with a meaningful opportunity should be when the waiting list is five years long.

*HUD Response:* HUD appreciates all the comments received regarding this question. With respect to the comments that HUD establish a hard cap of 50 percent of the number of vouchers the PHA may project-base (with exceptions based on local services) or remove the limitation cap entirely, the cap and the

exceptions to the cap are statutory requirements and consequently HUD cannot alter or remove the cap through rulemaking. HUD further agrees with the comments that the determination to choose to project-base vouchers rests with the PHA, including the decision to project-base vouchers in units that, as a result of the HOTMA amendments to 42 U.S.C. 1437f(o)(13)(B), do not count against the percentage limitation on PBV units. However, nothing in the HOTMA provision that excludes units previously subject to federally required rent restrictions or that were receiving another type of long-term housing subsidy provided by HUD from the percentage limitation relieves the PHA of its responsibility to administer its PBV program in accordance with all other program requirements. In cases where the percentage of units the PHA is contemplating project-basing is over 50 percent of ACC units, HUD is concerned about the potential impact on the PHA's ability to fulfill its obligations under 42 U.S.C. 1437f(o)(13)(E). Section 1437f(o)(13)(E) provides that families may move from the PBV unit at any time after the family occupied the unit for 12 months, and that upon such a move, the PHA shall provide the family with HCV tenant-based assistance or other comparable tenant-based assistance, and further provides that if such assistance is not immediately available, this requirement may be met by providing the family priority to receive the next voucher or comparable tenant-based rental assistance.

The use of PBV assistance can be an effective preservation tool and HUD is supportive of the use of PBV to prevent the loss of affordable housing units in their communities. However, in cases where a PHA is selecting a project for PBV assistance that would result in a situation where the PHA would be project-basing 50 percent or more of the PHA's authorized units, HUD believes that it is critical that the PHA has first fully considered the ramifications of that decision for its program, including if and how the PHA will be able to fulfill its statutory obligation to provide priority for tenant-based rental assistance to PBV families that wish to move consistent with 42 U.S.C. 1437f(o)(13)(E). Furthermore, since available vouchers would need to be prioritized for PBV families exercising their statutory right to move with tenant-based assistance, PHAs should also want to take the potential impact on families on the PHA's tenant-based waiting list into consideration. Consequently, this final rule provides that PHAs must perform an analysis of the impact prior to selecting a project for PBV assistance if project-basing 50 percent or more of the PHA's authorized voucher units, and the analysis should consider the PHA's ability to fulfill its responsibilities to provide tenant-based assistance to PBV families that wish to move and the impact on the tenant-based waiting list in such cases.

Replacement Housing and Units

One commenter proposed that HUD exempt off-site public housing replacement from caps to help deconcentrate poverty. Another commenter recommended that HUD allow off-site public housing replacement to maximize flexibility to use PBVs to replace public housing. Another commenter expressed concern over § 983.59, because replacement units should reflect the number and size of units required by the original residents to maximize their preference to return, reduce displacement, and maximize the preservation of site-based units in the community, according to the commenter. The commenter requested a civil rights review if there is any loss of units or change in unit size. As part of the redevelopment process, the commenter suggested that developers be required to survey residents about their housing size needs and only alter unit sizes if the survey demonstrates that the original residents require fewer or different sized units. The commenter further recommended the following: (1) that a reduction in the total assisted replacement units should be prohibited, unless the civil rights review makes no adverse finding; (2) the developer must demonstrate that the unit is in a voucher friendly area as well as located in a census tract where the poverty rate is greater than 20 percent; and (3) the resident notice and consultation reflect a desire not to return to PBV units. Commenters additionally opposed HUD's limitations that replacement units be on the same physical site as improper on fair housing grounds and overly restrictive, which the commenters stated was an unnecessary restriction and reinforced racial segregation.

*HUD Response:* First, HUD clarifies that nothing in the proposed rule prohibited off-site replacement. The provision at § 983.59(d) of the proposed rule served only to clarify which units are excluded, by statute (section 106(a)(2) of HOTMA), from the percentage limitation and income-mixing requirement. Under both the proposed rule and this final rule, PHAs may project-base units to replace formerly assisted or rent-restricted units off-site. However, a PHA's choice to replace units off-site does not result in those units being excluded from the percentage limitation or income-mixing requirement. Because the exclusion in section 106(a)(2) of HOTMA provided only that ''units of project-based assistance that are attached to units previously subject to federally required rent restrictions or receiving another type of long-term housing subsidy provided by the Secretary shall not count toward the percentage limitation,'' units located on an entirely different site from those replaced do not qualify for the statutory exclusion from the percentage limitation. Similarly, such units do not qualify for the statutory exclusion from the income-mixing requirement at section 106(a)(3) of HOTMA, which excluded only ''units previously subject to federally required rent restrictions or receiving other project-based assistance provided by the Secretary.''

HUD recognizes Congress's intent to preserve public and other affordable housing under the PBV program by (1) providing that on-site replacement units do not count toward the PBV percentage limitation and (2) giving HUD the authority to create additional exception categories. HUD acknowledges that sometimes attaching PBVs at an off-site location may better advance fair housing goals, including to racially integrate communities and to provide replacement housing of adequate bedroom size, which commenters cited as concerns. In many cases, the off-site project would be eligible for the increased cap at § 983.6(d)(1)(iv) (projects in areas where vouchers are difficult to use). In addition, to more directly facilitate opportunities to replace housing off-site, HUD is adding at § 983.6(d)(v) of this final rule an exception category specifically for off-site PBV replacement housing under the PHA's increased cap authority (under which the PHA may project-base an additional 10 percent of authorized voucher units). HUD believes this additional category will address the concerns raised and further notes that PHAs have other options beyond this new exception authority to develop off-site replacement housing with PBV assistance. Under the RAD PBV program, HUD waived section 8(o)(13)(B) of the 1937 Act so that covered projects, including those RAD PBV projects developed at a new location, do not count against the PBV percentage at all. Finally, PHAs can and should be making efforts to improve their tenant-based voucher programs to better address the aforementioned fair housing concerns.

Exclusion for LIHTC and 515 Loans

Commenters supported HUD's proposal to include units that previously received LIHTC allocations or 515 loans as excepted units. However, commenters stated HUD lacks statutory authority to limit this exclusion to properties that have been subject to rent limitations or received specified types of assistance within five years prior to PHA commitment of PBVs. Commenters recommended removing this limitation or incorporating an exception for replacement of old public housing properties.

*HUD Response:* HUD has reviewed the comments and has determined that HUD has the statutory authority to limit this exclusion to properties that have been subject to rent limitations or received specified types of assistance within five years prior to PHA commitment of PBVs.

General Opposition

A commenter stated that requiring PHAs to analyze the impact on the availability of vouchers and demonstrate that they will still have sufficient tenant-based vouchers available within a reasonable period of time for eligible PBV families that wish to move is costly and burdensome to PHAs. One commenter opposed HUD requiring an analysis as a pre-requisite for project-basing additional vouchers, due to a concern that an analysis will remove the PHA's discretion to decide to project-base, which would impact PHAs' broader plans to serve their communities.

*HUD Response:* In this final rule, an analysis of impact in § 983.58 appropriately addresses the risk of unintended or unanticipated consequences that over-use of PHAs' broad and unlimited exception authority to project-base formerly restricted or assisted units may have without creating undue burden.

Opposition to Setting a Specific Threshold

A commenter opposed HUD setting additional thresholds based on the percentage of vouchers and found the current turnover method for PBV assistance sufficient. This commenter stated that high rates of turnover at a property indicate the need for improvement and retention of tenants. Another commenter recommended that HUD provide PHAs with additional discretion in allowing PBV tenants to leave with their voucher or extending the occupancy requirement in PBV to two years, which is consistent with RAD, due to PBVs' higher turnover rate than other developments, which increases HCV waitlists. Commenters also recommended alternating the turnover voucher issuance between households on the HCV list or other waiting list.

*HUD Response:* HUD is unable to modify families' option to move with tenant-based assistance because it is required by statute.

Recommended Threshold Percentage of Vouchers

A commenter stated that the increase in a PBV household's eligibility to request vouchers leads to a waitlist backlog and an impact on occupancy in some locations, increased vacancy rates, and higher turnover costs. This commenter recommended that PHAs have the flexibility to administer a 25 percent cap on tenant-based attrition vouchers to eligible requesting PBV households, so that 75 percent of attrition vouchers go to HCV waitlist families. The commenter suggested this approach as equitable to house unsubsidized families faster while preserving PBV residents' rights to continued HCV assistance.

*HUD Response:* HUD reviewed the comment and has determined that HUD is unable to modify PBV families' option to move with tenant-based assistance because it is required by statute.

Alternative Suggestions

A commenter stated that the uncertain availability of tenant-based vouchers due to attrition, being over-leased or under-leased, and spending shortfalls, makes it difficult to set a threshold that would ensure that PBV participants can be issued a tenant-based voucher within a certain timeframe. This commenter stated that the PBV cap as a percentage of a PHA's total allocation is a better predictor that tenant-based vouchers will be anticipated to be available for program transfers. The commenter also stated that PBV assistance is preferable over tenant-based assistance because PBV property owners target certain special needs population, eliminating the barriers experienced to lease from a private landlord in the open rental market.

*HUD Response:* HUD has reviewed the comment and determined that this final rule will require an analysis of impact in § 983.58, which is required if project-basing 50 percent or more of units under the ACC.

Congressional Authority

Commenters stated that HUD does not have the statutory authority to control a PHA's authority to project-base vouchers. One commenter stated that if HUD decides to place more restrictions on PHAs, then it should be Congressionally authorized. Another commenter recommended that HUD increase the number of housing vouchers in general.

*HUD Response:* With regard to the comment that if HUD decides to place more restrictions on PHAs in terms of the number of vouchers that may be project-based, the restrictions should be Congressionally authorized, HUD agrees that the determination to choose to project-base vouchers rests with the PHA, including the decision to project-base vouchers in units that do not count against the percentage limitation on PBV units. The final rule does not place additional restriction on the number or percentage of vouchers that the PHA may project-base. However, nothing in the HOTMA provision that excludes units previously subject to federally required rent restrictions or that were receiving another type of long-term housing subsidy from the percentage limitation relieves the PHA from its responsibility to administer its PBV program in accordance with all other program requirements. HUD is concerned about the PHA's ability to fulfill its obligations under 42 U.S.C. 1437f(o)(13)(E) in cases where most or all of the PHA's vouchers are project-based. Section 1437f(o)(13)(E) provides that families may move from the PBV unit at any time after the family occupied the unit for 12 months, and that upon such a move, the PHA shall provide the family with HCV tenant-based assistance or other comparable tenant-based assistance, and further provides that if such assistance is not immediately available, this requirement may be met by providing the family priority to receive the next voucher or comparable tenant-based rental assistance. The use of PBV assistance can be an effective preservation tool and HUD is supportive of the use of PBV to prevent the loss of affordable housing units in their communities. However, when a PHA is considering project-basing a high percentage of its authorized units, HUD believes that it is critical that the PHA should take into account if and how the PHA will be able to fulfill its statutory obligation to provide tenant-based rental assistance to PBV families that wish to move. Further, since available vouchers would need to be prioritized for PBV families exercising their statutory right to move with tenant-based assistance, PHAs would also want to take the potential ramifications for reaching families on the PHA's tenant-based waiting list into

consideration. Consequently, this final rule provides that in cases where a PHA is selecting a project for PBV assistance that would result in a situation where the PHA would be project-basing 50 percent or more of the PHA's authorized units, the PHA must perform an analysis of the impact of its program.

With regard to the commenter recommendation that HUD increase the number of housing vouchers in general, HUD cannot increase the number of authorized vouchers through this final rule. New vouchers and the funds to support them are provided by Congress through HUD's appropriations acts.

HUD Report/Study

A commenter stated that families should not be forced to wait in potentially unsafe housing while they wait for the PHA to process the PBV-to-HCV transfer. Therefore, commenters suggested that HUD and PHAs monitor and report from the next three to five years increases in wait times for HCV assistance from PBV families where PHAs have increased the availability of PBV assistance, due to HOTMA.

*HUD Response:* HUD's position has always been that families should not be forced to wait in potentially unsafe housing while they wait for the PHA to process a family's right to move.

**29. Inspecting Units (§ 983.103)**

*Question 24: Non-Life-Threatening (NLT) Conditions for New Construction and Rehabilitation Housing*

One commenter stated that NLTs could effectively be used when newly constructed developments have units ready for occupancy, but the public space areas are still not fully developed, and the development can obtain a temporary certificate of occupancy. A commenter proposed that HUD continue to use the current definition for NLT conditions for new construction and rehabilitation housing because it streamlines standards and provides owners with the opportunity to address minor issues that arise from construction or rehabilitation work.

A commenter stated that there is no reason for new construction or rehabilitation to fail HQS when they have the final certificate of occupancy, especially where new construction is built under strict county and local requirements. Another commenter urged that new construction or rehabilitated units should be subject to regular HQS inspections, and not NLT or alternative inspections. However, this commenter suggested that PHAs should have discretion in applying NLT or alternative inspection options.

Another commenter expressed that while NLT conditions may occur in new construction or rehabilitated properties, other units, including PBVs, can use NLT/alternative inspections as well. A commenter stated that NLT provisions could be helpful on rehabilitation or new construction when minor defects fail HQS and NLT conditions are found. This commenter expressed that for rehabilitation or new construction, the NLT option could be helpful in expediting assistance approvals. This commenter also recommended changing the allowable timeframe, rather than eliminating the alternative inspection option, would be a better solution to the problem of the alternative inspection occurring prior to rehabilitation.

One commenter recommended that under § 983.103(b), inspection timing and procedures of new construction and rehabilitation projects be consistent with the NLT option, and that under § 983.103(f) additional time should be permitted for inspections of units in which the owner or family refuse access to the PHA, unless the regulation states otherwise. This commenter also supported HUD revising the repair time under § 983.103(f) to 30 days after the PHA provides owner notification of the deficiency.

One commenter supported HUD's proposal of alternative inspections, by stating that alternative inspections can fulfill the obligation for initial HQS inspection in unsafe circumstances for tenants and inspectors to enter units that are occupied. Another commenter noted the administrative burdens of alternative inspections such as tracking the units, notifying the landlords and tenants, scheduling the inspections, and obtaining results from the owner, or the agency doing the inspection. This commenter stated that this may create delays in assisting tenants, especially for units that must pass a PHA inspection. This commenter recommended that HUD use alternative verification methods of corrections to failed inspection items, which will help administratively and with producing positive relationships with landlords as well as assisting families quickly. This commenter also noted that PHA-owned housing should not have a problem passing HQS.

A commenter stated that PHAs should have the ability to utilize alternative inspection and NLT options with respect to PBV new construction and rehabilitation projects, because these projects must meet local code standards to receive a certificate of occupancy, and, therefore, they are unlikely to be uninhabitable. The commenter stated that, while minor items may remain, these items do not threaten the lives of renters, and they should not prevent a PHA from placing the unit under a HAP contract.

Commenters expressed that PHAs should have discretion deciding whether to implement NLT inspections for units because requiring NLT inspections for certain units makes implementation overly complex. Other commenters noted confusion and requested HUD clarify that PHAs can decide whether to apply initial inspection flexibilities project-by-project. Another commenter stated that another form of acceptable alternative inspections could include a city inspection or a certificate of occupancy. One commenter suggested that HUD incorporate alternative requirements from PIH Notice 2020–33.

*HUD Response:* HUD appreciates the comments both in favor of and against extending the NLT provision to new construction and rehabilitation PBV. HUD has chosen not to extend the NLT option to new construction or rehabilitation at this time. Additionally, HUD is not extending the alternative inspection option to new construction or rehabilitation to ensure the PHA inspects the newly completed work. HUD agrees with the comments stating that the NLT provision may be applied to existing housing at the discretion of the PHA and this is reflected in this final rule.

**30. Nature of Development Activity (§ 983.152)**

*Previously Unassisted Units*

A commenter stated that adding previously unassisted units to a HAP contract should not be considered development activity, as it is often due to availability of funding and/or eligibility of in-place families, and, as such, no additional regulatory approvals should be necessary.

*HUD Response:* Section 983.152(b)(2) of the proposed rule did not operate to include in the definition of ''development activity'' the act of adding previously unassisted units to a HAP contract. Rather, ''development activity'' was defined in § 983.3(b) and § 983.152(b)(2) of the proposed rule addressed cases in which development activity occurred to add previously unassisted units in the project to the HAP contract. However, HUD determined that including such activity under the definition of ''development activity'' and in subpart D of part 983 led to significant confusion among commenters in interpreting the rule as a whole. As a result, in this final rule HUD amends the definition of

''development activity'' as described above in discussion of comments pertaining to § 983.3, such that ''substantial improvements'' undertaken in order to add units to a contract are clearly distinct. Accordingly, HUD removes discussion of substantial improvements from § 983.152 of this final rule. Section 983.207 of this final rule contains provisions applicable to adding units, including when substantial improvement will occur in order to add the units.

*Broadband*

A commenter suggested that the broadband requirements referenced in § 983.152(b)(2) should not apply when adding previously unassisted units to a HAP contract because the installation of broadband infrastructure requires construction work and should be triggered only if work is being done.

*HUD Response:* The proposed § 983.152(b)(2), as restructured and moved in this final rule to § 983.207(d), applies only when substantial improvement is undertaken to add previously unassisted units in the project to the HAP contract, and the requirement to install broadband infrastructure is further limited as provided therein. As a result, this final rule does align with the commenter's proposed limitation that the broadband infrastructure requirement applies only when work is being done.

**31. Development Requirements (§ 983.153)**

*Subsequent Rehabilitation or Development Activity*

A commenter recommended that HUD continue to only require subsidy layering review for initial awards of PBV assistance and not upon subsequent rehabilitation or development activity because it will be administratively burdensome for project owners and PHAs.

*HUD Response:* This comment is addressed in the discussion of § 983.11 above.

*Section 3 Compliance*

This commenter also stated that HUD's section 3 compliance proposal is neither authorized by statute nor consistent with regulations in part 135, and, therefore, the commenter proposed that HUD delete section 3 compliance as a development requirement, because section 3 does not apply to monthly rental assistance payments.

*HUD Response:* Pursuant to the section 3 final rule published at 85 FR 61524 (Sep. 29, 2020) and codified at 24 CFR 75.3, which eliminated the applicability of section 3 to assistance under section 8 of the 1937 Act, HUD does not retain section 3 compliance as a development requirement in this final rule. The section 3 rule does make clear that residents of housing receiving section 8 assistance and who are employed by a section 3 business concern are included in the definition of *section 3 worker.* The PHA must report the number of hours worked by section 3 workers.

*Applicability of Davis-Bacon Requirements*

Commenters stated that it would be unreasonable for HUD to require a PHA to enforce owner compliance with labor standards, specifically Davis-Bacon, in circumstances where there was no Agreement. A commenter further added that where a project's development does not depend on the provision of PBVs, as few obstacles as possible should be provided to permit affordability, because these developments do not need PBV assistance to be built and they are often the most desirable, best located, and most advantageous developments. Another commenter expressed that it is unclear how to reconcile the exemption of non-Agreement projects from Davis-Bacon (§ 983.153(c)(1) of the proposed rule) and the proposal that projects that do not enter Agreements must comply with the development requirements of § 983.153 (§ 983.154(e)(2) of the proposed rule, which has been moved to § 983.154(f)(2) of this final rule). Some commenters opposed excluding rehabilitated and newly constructed projects from the Davis-Bacon wage rate requirements. A commenter stated that PHAs do not have flexibility under the statute to exclude rehabilitation or new construction of PBV projects from Davis-Bacon coverage. A commenter suggested giving PHAs discretion to exclude rehabilitation or new construction from Davis-Bacon wage requirements.

*HUD Response:* HUD appreciates the comments in support of the exclusion of units developed without an Agreement from the labor standards at § 983.153(c)(1) of the proposed rule, but does not adopt the proposed language in this final rule. While the impact of paying prevailing wages on a project's development cost could be viewed as an obstacle to development, HUD agrees with commenters who pointed out that this cost must be balanced against the historical reasons for the labor standards, including ensuring that federally assisted projects do not depress local wage standards. HUD appreciates the commenter's support of PHA discretion regarding use of Davis-Bacon wage requirements, but has determined upon further reflection that the PHAs' new option to decline to use an Agreement does not impact the applicability of Davis-Bacon wage requirements. In the case of a newly constructed or rehabilitated project, the owner is seeking a commitment of PBVs in advance of development of the project, regardless of whether the PHA and owner enter into an Agreement, and the PHA's pre-construction offer and owner's acceptance of the PBV offer constitutes the agreement triggering Davis-Bacon requirements in accordance with section 12 of the 1937 Act. Therefore, HUD provides in this final rule that a PHA decision to use no Agreement or to execute an Agreement after construction or rehabilitation has commenced will not relieve an owner's responsibility to pay Davis-Bacon prevailing wages, consistent with the statutory intent of section 106(a)(4) of HOTMA and section 12 of the 1937 Act.

HUD appreciates the comment regarding the relationship between § 983.153(c) and § 983.154(e) (now § 983.154(f) in this final rule). In response, HUD amends § 983.154(f) to better clarify that the owner need only comply with development requirements of § 983.153 that are applicable to the particular project when the development occurs without Agreement. For example, the Davis-Bacon compliance requirement is applicable only if the HAP contract will assist nine or more units.

*Use of an Alternative Document*

A commenter stated that HUD should not require Davis-Bacon coverage through an alternate document. Another commenter suggested using an alternate document or a document created by a PHA. One commenter urged HUD to provide a clear and consistent policy regarding how to execute alternate documents to avoid confusion.

*HUD Response:* HUD determines that, where the PHA will not use an Agreement, the PHA's notice of selection of the project and the owner's acceptance is the mechanism by which the owner agrees to compliance with Davis-Bacon requirements. This final rule adds explanatory text regarding the notice of selection in §§ 983.51(f) and 983.153(c), in response to comment.

**32. Development Agreement (§ 983.154)**

*Begin After Environmental Abatement*

A commenter suggested that development activity for new construction should exclude environmental abatement.

*HUD Response:* Environmental abatement may constitute a significant or inseparable portion of work involved in new construction. Therefore, in cases in which the nature of environmental abatement itself constitutes commencement of development activity or in which environmental abatement involves work that occurs following the commencement of development activity, HUD determines it is appropriate for such abatement to be subject to the standard rules governing development activity in this part 983.

*Consult With Interested Parties*

A commenter recommended that HUD consult with industry groups and interested parties and utilize nonbinding notice documents to define and develop additional guidance on the term, ''rehabilitation activity'' noted in § 983.154(c)(2).

*HUD Response:* HUD appreciates this comment and will consider it when developing guidance on the PBV program.

**33. Term of HAP Contract (§ 983.205)**

*Question 27: Contract Extensions*

Commenters urged HUD to allow HAP contract extensions beyond 40 years to permit sufficient time to secure recapitalization and facilitate preservation. A commenter explained that HAP contracts do not always align with other regulatory agreements and projects may need to secure long-term financing during their regulatory agreement. Another commenter suggested that HUD allow for extensions 60 months prior to the contract expiration instead of the existing contract extension beyond 40 years until 24 months prior to the HAP contract expiration. Other commenters proposed that HUD allow PHAs to commit PBV contract extensions where re-syndication extends the affordable term tied to financing beyond the term of the PBVs and allow PHAs to establish the terms of the PBV HAP contracts as provided by PIH Notice 2017–21.

A commenter stated that HUD should modify § 983.205(b)(4) to allow the PHA and the owner to agree in advance to additional conditions applying to continuation, termination, or expiration of the contracts; instead of keeping the existing language, which the commenter stated requires that PHAs only use the contracts provided by HUD. One commenter stated that independent entities are unsuitable to determine the appropriateness of contract renewals, and that PHAs should make this determination because PHAs can assess resources and the local housing market demand to determine the best interests of the PHA's portfolio and residents.

*HUD Response:* In review of comments received, it became apparent that the language of § 983.205(b) in the proposed rule was not sufficiently clear that HUD does allow a HAP contract to be extended beyond 40 years. Therefore, HUD has revised § 983.205(b) in this final rule to clarify this point.

In consideration of public comments, HUD also revises § 983.205(b) in this final rule to provide that, at any given time before a PBV HAP contract expires, the PHA may execute any number of extensions (with terms up to 20 years each) such that there are up to 40 remaining years on the contract. HUD believes this will provide PHAs sufficient flexibility to extend the HAP contract term as needed to meet the needs of the local community and align with common preservation efforts as described by commenters, while striking a reasonable balance with the PHA's obligation to make its statutorily required determination prior to extension. As such, the rule continues to require the PHA to determine that each extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities but recognizes PHAs are in the best position to determine the appropriate time to consider an extension. Additionally, this change streamlines and simplifies PBV processes.

With respect to comments that propose that HUD allow the PHA and the owner to agree in advance to additional conditions applying to continuation, termination, or expiration of the contracts, the statute authorizes HUD (not the PHA) to impose such conditions. HUD has chosen not to do so. Lastly, with respect to the comment concerning the role of the independent entity in making determinations on HAP contract extensions, HUD finds the commenter's explanation persuasive and, further, determines that PHAs are best positioned to set the initial term of the contract. Therefore, HUD removes the independent entity function in agreeing to the initial term and extensions in this final rule.

**34. Contract Termination or Expiration and Statutory Notice Requirements (§ 983.206)**

Commenters suggested adding to § 983.206(d) a requirement that an owner's termination of the PBV contract because the PHA has lowered the rent below the initial rent cannot be effective until the PHA has (1) notified tenants of the upcoming change to HCVs; (2) executed the required tenant-based voucher HAP contract between the owner and PHA; and (3) provided tenant-based vouchers to the tenants. This commenter recommended requiring PHAs to complete these tasks within a specified timeframe (and PHAs can avoid this by agreeing in the initial contract or extension not to reduce rents below the initial rent to the owner).

Some commenters supported prohibiting owners from terminating the family's housing assistance due to the termination or expiration of a PBV HAP contract. Another commenter supported HUD not requiring that families be allowed to stay in their same units, and instead, allowing a PHA and owner to make decisions about handling terminations locally. This commenter claimed that HUD lacks the statutory authority to mandate that families be allowed to stay in their own units, since the statute explicitly mentions remaining in the same project.

Another commenter suggested modifying § 983.206, to state that tenants whose PBV units are re-developed should not be treated as contract terminations. One commenter supported families remaining in the same unit and not just the same project. In § 983.206(b) and (b)(6), regarding tenants' right to remain, a commenter recommended that the ''other good cause'' reference to the HCV rule at § 982.310 be limited to tenant misconduct; there should also include conforming language inserted into the HUD PBV tenancy addendum. This commenter also suggested that section 106 of the HOTMA statute extends the tenant's right to remain to the project, and not just the unit, as a guarantee for tenant housing stability upon subsidy expiration or termination in circumstances where family size has changed, or the current unit may need rehabilitation that requires extended absence. Another commenter supported families with disabled individuals or children remaining in the same unit due to hardships caused by moving and recommended letting the extension expire when they voluntarily leave or become ineligible for PBV.

A commenter recommended stating in § 983.206(d) that under situations of PBV HAP contract termination, that the PHA may not re-screen for eligibility beyond income when providing HCVs to former PBV tenants. The commenter suggested clearly stating tenants' right to replacement assistance and housing stability, despite PHA or HUD administrative delays in providing the required assistance. The commenter also stated that under § 983.206(d), the proposed exception to the one-year notice requirement for an owner who

terminates a PBV HAP contract after the PHA reduces the contract rent below the initial rent to owner is statutorily unauthorized. A commenter suggested revising § 983.206(a)(4) to clarify that the tenant has the right to remain at prior rent until the owner has provided legally required notice and that notice period has elapsed, not just for the one-year period.

*HUD Response:* HUD has adopted commenters' recommendations in part. Section 983.206 in this final rule provides a timeframe by which a PHA must issue families a tenant-based voucher before planned contract termination, except in limited circumstances specified by HUD, and requires sufficient notice by the owner to the PHA to allow such voucher issuance. HUD declines to adopt the recommendation that the PBV HAP contract not be terminated until execution of a tenant-based voucher HAP contract. The provision implemented in this final rule, at § 983.206(b), requires the PHA to issue families tenant-based vouchers, not to assure that families locate units to lease with the vouchers. The tenant-based voucher HAP contracts for tenants who stay in place must not be effective prior to the date of termination (end date) of the PBV HAP contract, and circumstances may arise in which the actual end date must change from the planned end date. In this final rule, § 982.305 provides PHAs sufficient flexibility to execute the tenant-based HAP contracts retroactively if all contracts cannot be executed timely in relation to termination of the PBV HAP contract. In cases in which families choose to use their tenant-based assistance elsewhere, using target dates for execution of each tenant-based HAP contract to determine the end date of the PBV HAP contract would be unworkable.

HUD has considered the comments regarding whether a family should have the ability to remain in the same unit and has determined to retain the proposed rule language allowing a family instead to remain in the same project. While HUD recognizes that moves may cause hardship for families, HUD determines that PHAs are in the best position to consider conditions and limitations surrounding specific contract terminations and expirations and assist families to secure the best possible housing for them given those considerations. Notwithstanding, retaining the proposed language on allowing a family to remain in the same project does not exempt a PHA from receiving, processing, or granting a reasonable accommodation to remain in the unit. Regarding the comments concerning redevelopment, HUD is not adopting the proposed change. Section 983.212 in this final rule allows PHAs and owners to engage in substantial improvement on units under HAP contract without terminating the HAP contract, and where PHAs and owners agree to do so they must follow the rules set forth in § 983.212. Section 983.206, by contrast, has the requirements in cases of contract termination.

With regard to good cause for termination, HUD adopts the commenter's suggestion in part. HUD in this final rule allows for lease terminations on the basis of certain grounds in § 982.310, to include family duties, which the family has failed to fulfill and other family misconduct, as well as when the owner will use the unit for a non-residential purpose or to renovate the unit. Nothing in this final § 983.206 is intended to preempt operation of State and local laws that provide additional limitations regarding allowable causes for lease termination. HUD intends to issue a tenancy addendum specific to families who were residing in a PBV project at contract termination who elected to remain in the project with tenant-based assistance, which will also reflect the specific grounds on which the family's lease may be terminated. HUD determines this final rule allows for meaningful election by families to remain in the project while also providing exceptions for situations under which the owner cannot reasonably be expected to allow a family to remain.

HUD does not make changes in this final rule in response to the comment on re-screening when families get tenant-based vouchers, as the proposed § 983.206(b)(4), retained in this final rule, adequately explains that such families are not new admissions; rather, they are and remain section 8 voucher participants, subject to the rules relating to participants (as further explained in the definition of ''admission'' in § 983.3). As discussed above, HUD has clarified some of the provisions in § 983.206 to better explain the timeframes involved in provision of tenant-based assistance. Finally, section 8(c)(8) of the U.S. Housing Act of 1937 defines the term ''termination'' for purposes of the owner notice requirement as ''the expiration of the assistance contract or an owner's refusal to renew the assistance contract. . . .'' HUD declines to further extend the one-year notification requirement to an owner's termination of the contract during its term due to a reduction below initial rent, to preserve the existing authority of the owner to terminate timely, given the owner's substantial interest in maintaining sufficient project income. However, HUD has added a 90-day notice requirement, so as to provide the PHA sufficient time for voucher issuance per § 983.206(b). HUD has also taken this opportunity to clarify when mutual termination of a PBV HAP contract during its term would be allowable and to specify that in those cases the full notice period is required.

With regard to the comment on § 983.206(a)(4), HUD does not believe a change is necessary as the text is already clear that the family may remain ''for the required notice period,'' which aligns with the comment.

*Insufficient Funding*

A commenter stated that HUD's implementation of the insufficient funding requirement (HOTMA section 106(a)(4), to be codified at 42 U.S.C. 1437f(o)(13)(F)(i)(I)), is critical to developers' ability to finance PBVs with minimal transition reserves. Commenters also recommended modifying language in § 983.206(c)(1) to clarify that sufficient funding is not necessary for a PHA to make PBV contract payments for a full year, despite unpredictable timing of full-year appropriations bills and the frequency of continuing resolutions.

A commenter stated that the legislative history indicates that Congress intended PHAs to prioritize project-based HAP contracts and provided neither HUD nor PHAs with the discretion contemplated by the proposed regulations.

*HUD Response:* HUD appreciates the comments regarding the nature of sufficient funding and agrees that PHAs need not consider sufficient funding as requiring a full year's PBV contract payments to be on hand. HUD has amended § 983.206(c)(1) accordingly.

Regarding the comment on prioritizing project-based HAP contracts, HOTMA section 106(a)(4), to be codified at 42 U.S.C. 1437f(o)(13)(F)(i)(I), provides ''that in the event of insufficient appropriated funds, payments due under contracts under this paragraph shall take priority if other cost-saving measures *that do not require the termination of an existing contract* are available to the agency . . .'' (emphasis added). Per this language, PHAs retain discretion to establish an Administrative Plan policy, as described in § 983.206(c)(1), for actions it will take if no cost-saving measures other than HCV or PBV contract termination are available.

**35. HAP Contract Amendments (To Add or Substitute Contract Units) (§ 983.207)**

*Cost of Reinstating Units*

A commenter suggested that HUD should revise § 983.207(b)(3) to reinstate units under a HAP contract without being subject to development requirements at § 983.152(b) because without it, PHAs would be subject to subsidy layering reviews and other burdens and it would place a significant burden and cost upon project owners. This commenter also urged that HUD does not apply the set of ''development activity'' requirements to projects that undertake modifications to PBV units which result in adjustments to pre-existing contracts because PHAs may need to add units or substitute units after HAP signing, and this would make that process very burdensome.

*HUD Response:* In all cases in which units are added to a PBV HAP contract per § 983.207(b), including where a unit is being reinstated after having previously been removed, HUD determines it is appropriate for certain requirements at § 983.207(d) to apply when the unit is undergoing substantial improvement. As discussed earlier in this preamble, this final rule separately defines ''substantial improvement'' and ''development activity,'' and applies appropriate requirements to each. Substantial improvement undertaken during the term of the HAP contract, as defined in § 983.3(b), is significant work and, as such, application of the specific requirements listed in § 983.207(d) represents a reasonable balance of the costs to project owners and the interests of HUD in maintaining housing quality and program integrity. As for the comment about ''development activity'' requirements, HUD determined that the limited requirements applicable to substantial improvement undertaken to add units to a contract, including when the added unit is a substitution for a contract unit, represent the minimum necessary requirements for such relatively intensive activity. Therefore, HUD retains both requirements in this final rule.

**36. Owner Certification (§ 983.210)—Davis Bacon, Other Conforming Changes**

Commenters supported the proposed Davis-Bacon changes that would remove the current owner certification under the HAP contract at § 983.210(j) that repair work on a project selected as an existing project may constitute development activity and, if determined to be development activity, the repair work shall be in compliance with Davis-Bacon requirements. One commenter supported HUD's Davis-Bacon wage rate requirement proposal due to its potential reduction in development costs; permittance of State independence to apply their own wage requirements; and the reduction of administrative burden on projects that have multiple funding sources. Another commenter expressed that the Davis-Bacon changes would encourage owners and operators of existing housing to incorporate PBVs while maintaining and improving living conditions for residents.

Commenters supported the removal of ''existing housing'' from the Davis-Bacon wage rate requirement. One commenter stated that excluding existing housing provides clarity, because it aligns with the language and spirit of the 1937 Act. Another commenter stated that applying the wage requirement to existing housing significantly increases the cost of developing affordable housing and reducing the number of households that could be served by the PBV program. One commenter stated that eliminating existing housing from the Davis-Bacon wage rate requirements would allow owners to utilize more PBVs and potentially erase operating deficits, reach more ELI and VLI residents, and reduce reliance on gap financing when seeking to refinance.

*HUD Response:* HUD appreciates the comments in support of removing § 983.210(j), and in this final rule proceeds with the removal as proposed. As previously discussed in the preamble of the proposed rule, HUD acknowledges that the broad, open-ended definition of ''existing housing'' in place prior to this final rule has proven insufficient to ensure that PHAs properly classify PBV housing types and contributed to the Davis-Bacon issues that HUD attempted to address through the addition of the owner certification in § 983.210(j) in 79 FR 36146 (Jun. 25, 2014). In order to remedy this problem and other related issues with respect to other Federal requirements such as subsidy layering reviews, this final rule provides a much more specific and tighter definition of ''existing housing,'' which is described in detail elsewhere in this preamble.

**37. Substantial Improvement to Units Under a HAP Contract (§ 983.212)**

*Support*

Several commenters supported HUD's proposal to establish a five-year timeframe, within which development work would not be permitted except in extraordinary circumstances. A commenter stated that permitting development work within the first five years is only reasonable to prevent the circumvention of certain requirements that would normally be stipulated in an Agreement.

*HUD Response:* HUD appreciates the supportive comments, but reduces the general five-year limitation proposed to two years in this final rule (both the proposed and final rule contain exceptions to the general limitation). HUD believes doing so continues to ensure housing intended for immediate rehabilitation is subject to appropriate requirements governing rehabilitation. However, HUD believes a two-year period in which work will not occur is more reasonable to foresee.

*Opposition*

Other commenters opposed HUD's proposal to establish a five-year timeframe because it is overly restrictive. Commenters stated that requiring a burdensome permitting process would disincentivize owners of older housing from making periodic substantial repairs and renovations to maintain the housing in good condition. A commenter expressed that it is challenging to anticipate all physical needs in a five-year period. Another commenter stated that HUD's proposal would have a significant impact on residents by discouraging owners from conducting voluntary repairs and replacements that would improve the quality of life for residents and may stall or prevent the start of a HAP contract for units that would otherwise be eligible to receive PBVs.

A commenter warned that the five-year period would impact projects that may need work within five years of being built due to flawed work by the original builder. A commenter stated that the HUD-prescribed process to request development activity (called ''substantial improvement'' in this final rule, per discussion of changes to § 983.3 above) would create an additional administrative burden for PHAs without the process and expertise to assess development requests and determinations. A commenter warned that HUD's proposal would require non-MTW PHAs to obtain a waiver or to adopt a MTW demonstration activity to complete the unit rehabilitation and would require non-MTW agencies attempting to pursue public housing repositioning to need regulatory waivers. Another commenter stated that HUD's proposal may present challenges to create affordable housing through the PBV program because of the disincentive to perform capital work within five years of HAP contract signing and would force owners to

conduct a heavier workload upfront, which may be unsupported through existing financing tools.

*HUD Response:* HUD agrees that it would have been difficult for PHAs and owners to anticipate all physical needs requiring a significant improvement over a five-year period, and therefore changes the period to two years in this final rule.

HUD disagrees that the rule discourages repairs, replacements, and renovations. The owner is required to meet HQS and continues to be able to replace equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind (this is not substantial improvement as defined in § 983.3(b)), which should enable the owner to maintain the housing in good condition. An owner that instead has an immediate desire to undertake development activity remains able to do so through the process of project-basing rehabilitated housing, and HUD provides further flexibility at § 983.157 of this final rule to better accommodate these situations. An owner faced with an urgent, unanticipated need to engage in substantial improvement during the first two years of the contract may be able to receive PHA approval to do so under the exception for extraordinary circumstances. Taken as a whole, HUD determines that this final rule provides the greatest latitude possible to owners while still ensuring appropriate projects are subject to pre-development requirements such as subsidy layering review, Federal funds are used only in quality housing, and PBV-assisted families are housed stably.

The PHA (or independent entity, in the case of PHA-owned units) approval process codified in this final rule reflects minimum oversight necessary to ensure compliance with PBV requirements and protection of families. HUD incorporates into this final rule additional clarity for PHAs regarding the basis upon which to approve or disapprove owner requests. HUD does not anticipate that this final rule increases the potential need for waiver, as the prior rule also contained divergent processes to project-base rehabilitated housing versus existing housing, including limitations on development activity that could occur after HAP contract execution. This final rule improves the clarity and safeguards of existing limitations.

HUD is aware that project-basing rehabilitated housing entails a heavier workload upfront. Completing the development activity upfront typically has the intended result that the housing is in good condition longer and therefore is better positioned to serve as long-term housing for families. HUD expects that PHAs select existing housing for PBVs when the housing is in good enough condition to serve families for the contract period, without immediate housing instability due to substantial improvement. PBV funding supports rents to house assisted families, which may cover a project's ongoing operating expenses; it is not development funding.

*Suggestions and Alternatives*

Some commenters suggested HUD allow for exceptions in instances where improvement or upgrading is needed for the substantial improvement, such as energy efficiency efforts, security precautions, and previously scheduled projects that are part of effective long-term property maintenance plans. A commenter also stated that HUD should include a catch-all provision to allow improvements to protect the housing quality for assisted families or protect the viability of the project. Another commenter suggested that HUD create a ''pass-through'' of rental assistance where construction improvements are to be made in a property, similar to what is allowed in other project-based rental assistance. Commenters also recommended that PHAs have the discretion over permissibility, oversight, and monitoring of substantial improvement that commences after the beginning of the HAP contract as a means for PHAs to remain accountable to HUD for monitoring compliance and development requirements. Another commenter suggested that HUD adopt a three-year timeframe instead of a five-year timeframe.

*HUD Response:* HUD reviewed the examples commenters provided and determines they are adequately addressed by this final rule. HUD does not anticipate that projects that met HQS applicable to qualify for PBV assistance will then require non-emergency substantial improvement soon after contract execution to remain viable and compliant with HQS; usual maintenance should suffice. HUD does not add a pass-through option because doing so is not consistent with PBV program requirements. For example, section 8(o)(13)(K)(i) of the 1937 Act allows payment for vacant units only when vacancies are not the fault of the owner, section 8(o)(10)(A) requires that rent for a unit receiving HAP be reasonable at all times, and section 8(o)(8)(G) prescribes the required PHA actions with respect to HAP for units that do not comply with HQS and is incompatible with providing HAP for the purpose of housing a family who is leasing a noncompliant unit and living elsewhere. This final rule provides significant discretion to PHAs, balanced against adequate safeguards for assisted families and reasonable limitations to ensure the PBV program operates as intended. HUD adopts a two-year timeframe in this final rule rather than the three-year timeframe suggested by the commenter, because HUD believes the owner and PHA are better able to anticipate the need for substantial improvement over a two-year period.

Proposal Would Have No Effect

A commenter expressed that because project owners are often required to utilize several funding sources to fund substantial rehabilitation, it is likely that other funding sources used to finance the substantial improvement may independently trigger many of the cross-cutting requirements that HUD cites in question 25. Another commenter further stated that PHAs have mechanisms in place to ensure that projects comply with development requirements; adding an additional mechanism to substantial improvement after HAP contract signing would be burdensome.

*HUD Response:* HUD supports the additional oversight that other funding sources and PHAs independently require but finds it necessary to retain and clarify this section in this final rule to ensure PHAs can easily reference and comply with the PBV-specific requirements relevant to post-contract substantial improvement.

Rehousing During Rehabilitation

Commenters suggested that HUD add clarifying language stating that owners are permitted to continue receiving HAP for the family's re-housing during a fixed period of rehabilitation.

*HUD Response:* Housing assistance payments provide rental assistance for participant families, and therefore must not be paid to owners for units not occupied by participants. Under this final rule, the PHA may pay HAP for occupied contract units that meet HQS, except when the unit is temporarily vacant for a calendar month or less.

Emergency Site Work

A commenter asked HUD to provide detail regarding emergency site work performed for health and safety, emergency rehabilitation work conducted for health and safety, and fit-out of non-residential spaces occurring under a different general contractor contract. The commenter also expressed uncertainty pertaining to the applicability of these types of activities under the definition of ''substantial

improvement'' (which was included in the definition of ''development activity'' in the proposed rule) and the requirements pertaining to substantial improvement because this work is done in a manner that is either unanticipated in the project planning phase or falls outside a typical PBV project planning scope.

*HUD Response:* This final rule clarifies the term ''extraordinary circumstances'' in response to this comment. Emergencies generally qualify as extraordinary circumstances under this rule, though situations may arise in which an emergency instead constitutes a breach of HAP contract or a matter falling under the provisions for enforcement of HQS.

**38. How Participants Are Selected (§ 983.251)**

*Site-Based Waiting Lists*

One commenter suggested that HUD allow owners to maintain their own site-based waiting lists to expedite the tenant selection process as well as allow PHAs to establish compliance reviews to oversee owners. Another commenter encouraged HUD to maintain provisions describing roles and responsibilities of the owner and PHA in the guidance documents. This commenter disagreed with HUD requiring PHAs to formally incorporate site-specific tenant selection plans into their Administrative Plans if the plan is on file with the PHA and available to the public because incorporating the plans into the Administrative Plan will be burdensome for PHAs, due to frequent minor updates. The commenter also expressed concern regarding the statement in § 983.251(c)(7)(x) that HUD may act against the owner, PHA, or both, and suggested that if HUD intends to hold PHAs responsible for an owner's project-based waiting list, the regulations need to state that the PHA also has the right to take enforcement action directly against the owner. The commenter stated that in cases where a PHA has commenced enforcement actions against an owner, then HUD should not seek additional enforcement against the PHA.

Another commenter suggested deleting § 983.251(c)(7)(i). A commenter objected to the proposed requirement that a tenant selection plan (TSP) be included in the Administrative Plan for every owner. The commenter stated that owners may make frequent adjustments to their TSP, such as to respond to updates under the Violence Against Women Act or updated screening standards, and therefore every small TSP change, even if unrelated to waiting lists or preferences, would require an Administrative Plan amendment, and the PHA's Administrative Plan would have to be amended for every PBV project when the project is selected and then again when the TSP is approved by the PHA. The commenter suggested that selection plans should be on file with the PHA and posted online with the Administrative Plan but should not be specifically part of the Administrative Plan.

*HUD Response:* Under this final rule, HUD provides PHAs discretion to allow owners to maintain their own site-based waiting lists to expedite the tenant selection process. HUD requires PHAs that exercise this discretion to establish oversight procedures, which may include compliance reviews to oversee owners. HUD determined it is necessary for the minimum requirements codified in this final rule describing the roles and responsibilities of the owner and PHA to be located in the regulation so as to be easily located and consistently enforced, rather than only in guidance documents. As noted in this final rule, PHAs must formally incorporate the site-specific owner waiting list policies into their Administrative Plans. HUD does not believe incorporating the owner waiting list policy into the Administrative Plan will be cumbersome for PHAs because of frequent minor updates.

HUD maintains § 983.251(c)(7)(x) to ensure that the owner, PHA, or both, are held accountable and responsible for an owner's project-based waiting list. The administrative policy that is incorporated in a PHAs' Administrative Plan may state that the PHA also has the right to take enforcement action directly against the owner. Although there may be cases where a PHA has commenced enforcement actions against an owner, depending on the nature of the enforcement actions, HUD may still take additional enforcement actions against the PHA, if applicable.

HUD does not delete the requirement, as suggested by a commenter, at § 983.251(c)(7)(i). This final rule, however, does revise both §§ 983.251 and 983.10 by replacing tenant selection plan with owner waiting list policy. As a result of this change, the owner waiting list policy, not tenant selection plan, must be incorporated in the PHA's Administrative Plan.

*Civil Rights*

A commenter recommended that the proposed rule's preamble discussion that projects using preferences for families eligible for supportive services, including disability-specific services, must comply with Section 504, the Americans with Disabilities Act, and the Home and Community-Based Settings requirements be placed in § 983.251. Another commenter suggested § 983.251 be revised to require that tenant selection plans, criteria, and preferences must comply with all applicable civil rights requirements, and that all tenant selection criteria must be demonstrably related to the applicant's ability to fulfill the obligations of a subsidized tenancy, which would eliminate poor credit or eviction for nonpayment of unassisted rent or most criminal history as grounds for denial of tenancy. The commenter further stated that the rejection notice should require specific content, such as sufficient facts and the legal basis supporting the rejection as well as due process procedures to enable a fair review, even absent a tenant's request for a hearing. The commenter also suggested modifying § 983.251(c)(6) to require that applicants on the HCV waitlist receive a PHA offer to be placed on the PBV waitlists.

One commenter approved of HUD's modification to § 983.251 to require eligible families to qualify for services as well as removing restrictions that limit service preferences only to families with severe disabilities for whom such services cannot be provided in non-segregated housing. Another commenter urged HUD to revise § 983.251, to prioritize housing survivors of violence who are in the PBV program and require an emergency transfer under VAWA. Another commenter opposed banning preferences for people within a category of disability under § 983.251(d)(1) and stated that this conflicts with the Section 504 rules and is a violation of HOTMA, which permits preferences based on the class of disability associated with a project's supportive services. This commenter stated that a ban on disability-specific preferences also interferes with procuring capital resources for housing because non-PBV resources often target permanent supportive housing for people within specific categories of disability. The commenter suggested that HUD defer to the PHA's preference plan for people who qualify for disability-specific services. The commenter also explained that the waiver and remedial action process conflicts with HOTMA, which delegates the decision to the PHA, and the process is intrusive as well as costly. The commenter encouraged HUD to adopt a similar process to RAD, where the PHA and project owner in consultation with the partnering State and local officials, determine the scope of a disability-specific preference.

This commenter also suggested that HUD adopt the Centers for Medicare & Medicaid Services Homes and Community-Based Services (CMS HCBS) rules on what is the most integrated setting possible, found in 42 CFR 441.710(a), because projects meeting those standards do not require additional waiver or remedial action approval. The commenter recommended that HUD use flexible approaches to concentration, because the existing rigid policies applied to projects with dwellings for families receiving supportive services conflict with the exception to PBV income-mixing standards, which permits owners to exceed the PBV project cap for units providing supportive services. Therefore, the commenter concluded that HUD should define, within the PBV rule, integrated places that do not impose fixed limits on the concentration of disabled individuals in a development and, ultimately, meet the standards for a community-based setting.

*HUD Response:* HUD appreciates the commenters' recommendations. A PHA's preference for families who qualify for voluntary services, including disability-specific services under § 983.251(d), must not conflict with Section 504 rules.[17] Further, PHAs have a duty to ensure that the PBV project is compliant with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, the requirement to administer services, programs, and activities in a nondiscriminatory manner and meet the needs of qualified individuals with a disability under Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Fair Housing Act. See 24 CFR 5.105(a), 24 CFR part 8; 28 CFR part 35; 24 CFR part 100. In addition, this language allowing a preference to families who qualify for voluntary services, including disability-specific services, must be implemented consistent with the integration mandate under Section 504 and Title II of the ADA, wherein entities are obligated to administer their programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 24 CFR 8.4(d) and 28 CFR 35.130(d)).[18] Additionally, if a PBV project offers Medicaid-funded home and community-based services as part of ''disability-specific services,'' the PHA must also fully comply with the Federal home and community-based settings requirements found at 42 CFR 441.301(c)(4), (5) (''Home and Community-Based Settings''). In addition, PHAs are obliged to ensure that assisted units for persons with a disability are distributed throughout a project (24 CFR 8.26) and to make housing assistance available in the most integrated setting appropriate to the needs of qualified individuals with disabilities—*i.e.,* a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible. (See the *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of* Olmstead at *https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF*).

In response to the commenter that suggested revision of § 983.251 to provide that tenant selection criteria be demonstrably related to the applicant's ability to fulfill the obligations of a subsidized tenancy and proposing that HUD prescribe the contents of the rejection notice, HUD believes the commenter's concerns would not be appropriately addressed in § 983.251. Given the revision to § 983.251 in this final rule (described above in this discussion of § 983.251) to require the owner waiting list policy, not tenant selection plan, to be incorporated in the PHA's Administrative Plan where there will be an owner-maintained waiting list, § 983.251 is not an appropriate location for requirements relating to the owner's screening and selection of tenants.[19] The elements of the owner tenant selection policies and procedures at issue are instead covered by §§ 983.253 and 983.255. Section 983.255(b) of the current PBV regulations contains owner screening requirements and was not proposed for revision in this rulemaking. HUD determines the changes to the owner screening requirements the commenter proposes would require separate rulemaking, with opportunity for public comment. HUD notes, however, that the owner's practices under § 983.255(b) remain subject to § 983.253(a)(2), which states: ''The owner is responsible for adopting 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.'' HUD believes these current requirements governing the owner's screening practices adequately reflect the PBV program's purpose of serving low-income families. The owner notice of grounds for rejection is currently codified at § 983.253(a)(3). HUD adds to that provision, in this final rule, a requirement for the owner to provide a copy of the notice to the PHA. If, upon receipt of the notice, the PHA finds that the owner is noncompliant with program requirements, including § 983.253(a)(2), the PHA may take action for breach of the HAP contract. HUD intends to provide further guidance on the operation of §§ 983.253 and 983.255.

HUD notes that PHAs already have the authority to and are encouraged to prioritize victims of domestic violence, dating violence, sexual assault, or stalking who are in the PBV program and require an emergency transfer under VAWA in its Administrative Plan. As stated earlier, VAWA emergency transfers must occur in accordance with HUD's VAWA regulations at 24 CFR part 5, subpart L, and program regulations.

HUD declines to modify § 983.251(c)(6). If the PHA chooses under its Administrative Plan to use a separate waiting list for admission to PBV units, under paragraphs (c)(2)(i) and (iii) of § 983.251 as proposed the PHA already must offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance (including owner-maintained PBV waiting lists).

*Question 30. Should HUD establish additional or different criteria for the removal of the family from the PBV waiting list when a family rejects an offer, or the owner rejects the family?*

One commenter recommended that HUD streamline the PBV waiting lists process for easier oversight and efficient enforcement. Other commenters stated that HUD should allow PHAs to develop their own procedures to remove families from the PBV waiting list if the procedures are outlined in the Administrative Plan. Another commenter stated that PHAs should manage the removal of the family from

[17] HUD notes that § 983.251(d)(1) of this final rule cross-references the prohibition against adopting a preference for admission of persons with a specific disability at 24 CFR 982.207(b)(3). The prohibition at 24 CFR 982.207(b)(3) is not intended to detract from PHAs' discretion to give preferences to families who qualify for disability-specific services.''

[18] *See also The Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead* at *https://www.hud.gov/sites/documents/OLMSTEADGUIDNC060413.PDF.*

[19] HUD notes that in the case of an owner-maintained waiting list, the notice and hearing requirements when a family is denied admission to the waiting list are at 24 CFR 982.554, which was not proposed for change in this rulemaking, and, per § 983.251(c)(7)(vii) of this final rule, the owner provides the notice to the family.

the PBV waiting list when a family rejects an offer as adopted within their Administrative Plan. This commenter expressed that it should be optional for PHAs to monitor owner-maintained waiting lists because HUD would hold the PHA accountable for actions beyond the PHA's control. Another commenter stated HUD should not establish additional criteria; if a family rejects the unit, they should be removed from the list; and if an owner rejects the family, they should be removed from the project-based list.

One commenter stated that if a family meets the eligibility criteria and fulfilled all its obligations, an owner's rejection should not adversely affect the family's position on the PBV waiting list. One commenter stated there is no additional administrative burden involved in leaving a family on the general PBV list if the family rejects an opportunity or an owner rejects the family.

Another commenter expressed that owner-managed waiting lists have a history of discrimination, and that the proposed rule does not require enforcement, only an undefined ''oversight.'' The commenter stated that the authorities cited at § 5.105(a) are solely a list of Federal civil rights laws covering housing programs, and do not provide for specific oversight. A commenter suggested that HUD should revise § 983.251 to identify safety concerns for domestic violence survivors as a good cause to reject a unit, to prevent the survivor from choosing between housing and safety.

*HUD Response:* HUD appreciates the commenters' recommendations. This final rule provides PHAs with the procedural tools within their Administrative Plans to effectively streamline their PBV waiting list to create effective oversight and efficient enforcement as addressed in § 983.251. Further, this final rule allows PHAs to develop their own procedures to remove families from the PBV waiting list as long as the procedures are legally permissible and are outlined in their Administrative Plans in the case of a central PBV waiting list. Under this final rule, for an owner-maintained waiting list, the owner, not the PHA, is responsible for managing the waiting list, including processing changes in an applicant's information, contacting families when their name is reached on the waiting list, removing applicant names from the waiting list, and opening and closing the waiting list.

Although HUD appreciates the commenters' suggestions that HUD should not establish additional criteria, there can be situations in which the unit in question is not conducive to the needs of the family and is rejected, but the family still needs suitable housing, and, as a result, should not be removed from the project-based list. Therefore, HUD requires in this final rule that if a family rejects the offer of PBV assistance for good cause then the family cannot be removed from the PBV waiting list. Moreover, separate from this process, a family can always request a reasonable accommodation that may be necessary for a household member with a disability to remain on the PBV waiting list, including when the unit does not meet one's disability-related needs. Further, PHAs and owners are subject to all applicable Federal fair housing and civil rights requirements, including in their administration of this process. Even if the circumstances do not rise to the level of ''good cause'' as determined by the entity, a family may request a reasonable accommodation in accordance with Federal civil rights laws.

As for revising § 983.251 to identify safety concerns for domestic violence survivors, HUD already has protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, and these protections apply to admission to the project-based voucher program. Additionally, the provision added to this final rule specifying that if a family that rejects the offer of PBV assistance for good cause then the family cannot be removed from the PBV waiting list applies to these families; the safety concerns described in the comment constitute good cause.

*Other Questions and Suggested Modifications*

One commenter stated that HUD should revise § 983.251(c)(7)(x) to not take enforcement action against a PHA due to actions of an owner. This commenter stated that HUD should have the ability to act against the owner, and HUD should explicitly state it will not act against the PHA, especially when the PHA is acting in good faith to provide oversight. Another commenter recommended that HUD streamline the process for PHAs, families, and owners, modifying § 983.251(c)(7)(viii) to state that PHAs should provide the oral briefing while the owner refers a family to the PHA for a final eligibility determination to provide the family with the information needed to determine whether to accept an owner's offer and eliminate the need to submit income and other eligibility-related information to the PHA.

Commenters suggested that PHAs should be given the discretion to manage their waiting lists, including how families reject the offer of assistance or if the owner rejects the family. One commenter favored HUD keeping the provisions under § 983.251(c), regarding selection from a waiting list, in nonbinding guidance. Another commenter stated that PHAs should have discretion over owner-maintained waiting lists because the PHA cannot control whether an owner would comply. Other commenters suggested that HUD's rule should clearly state that PHAs may permit owners to maintain their own lists, regardless of whether the PHA itself maintains separate waiting lists for some or all its PBV properties in § 983.251(c)(2)(iii) and (c)(7)).

A commenter suggested that the rule should explicitly state that owners and PHAs are subject to all civil rights and fair housing requirements throughout § 983.251(c)(7). Another commenter suggested that HUD amend § 983.251(e)(1) and (3) to allow PHAs additional discretion in deciding how to handle the family's position on the PHA waiting list if the family turns down PBV. This commenter also supported PHAs having discretion over the number of offers a family may reject. Another commenter recommended that HUD should not permit PHAs to alter a family's place on a central PBV waiting list based on an owner's rejection of a family because it would harmfully impact a family's admission with respect to any other property with a PBV contract and violate a pre-HOTMA sentence of section 8(o)(13)(J) of the 1937 Act.

Commenters also recommended deleting the final sentence of § 983.251(b)(2), because HCV participants are not subject to a denial of assistance, and deleting the part explaining that the usual termination grounds would apply, as well as signaling that rescreening by PHAs is allowed.

*HUD Response:* HUD declines to revise § 983.251(c)(7)(x). Section 983.251(c)(7)(x) allows HUD to take enforcement actions for non-compliance against the PHA and the owner. If the PHA is not acting in good faith to provide oversight in accordance with § 983.251(c)(7)(x), HUD has the authority to enforce HUD's requirements.

As for § 983.251(c)(7)(viii), HUD maintains the process for PHAs to determine eligibility for the program. This ensures that all parties appropriately coordinate the placement of the family in the unit and will ensure compliance by PHAs with their continued responsibility for eligibility determinations. This final rule also

maintains the authority for PHAs, consistent with their Administrative Plan, to determine whether to allow for owner-maintained waiting lists. Further, HUD's final rule explicitly states that PHAs may permit owners to maintain their own lists regardless of whether the PHA itself maintains separate waiting lists for some or all its PBV properties in § 983.251(c)(2)(iii) and (c)(7). HUD will not amend § 983.251(e)(1) and (3) to limit flexibility to the PHA and owner and HUD maintains the proposed rule's option that the PHA may alter a family's place on a central PBV waiting list based on an owner's rejection of a family. HUD also declines to adopt the commenter's request to delete the final sentence of § 983.251(b)(2), because families remain subject to standard requirements for denial or termination of assistance. Lastly, HUD's final rule maintains the proposed rule requirements that owners and PHAs must comply with all applicable Federal, State, and local nondiscrimination and equal opportunity requirements (see 24 CFR 983.251(c)(7)(x) of the final rule (below)).

**39. PHA Information for Accepted Family (§ 983.252)**

One commenter suggested that the briefing packet include written information on the selected family's right to move with the next available voucher, because the right is unavailable to the family until after one year and so the family should be informed of the right in writing. The commenter also suggested that HUD modify § 983.252 to apply to both families selected by the PHA from its waiting list and to families selected from an owner-maintained list.

*HUD Response:* HUD agrees with the commenter about providing such written information and has revised the requirement to include written information on the selected family's right to move at § 983.252(b)(5). HUD will not make a change to the language regarding families selected off the waiting list but notes that the language in the proposed rule and finalized in this rule does apply to any accepted family, including participants selected from an owner-maintained list.

**40. Leasing of Contract Units (§ 983.253)**

A commenter recommended that HUD add the following language to § 983.253: ''PHAs are responsible for monitoring owner actions that may indicate rejection of applicants for legally impermissible reasons, as well as for informing applicants of other tenant-based and PBV waiting list options, whether referred by the PHA or on an owner's site-based waiting list.''

*HUD Response:* HUD declines to implement the commenter's suggested change in this final rule. PHAs have a duty and responsibility to monitor owner's actions that may indicate rejection of applicants for impermissible reasons.

**41. Vacancies (§ 983.254)**

*Question 32. What would be a reasonable timeframe for the PHA to complete this final eligibility determination?*

Commenters suggested a broad set of timeframes for the PHA to complete its final eligibility determination. Some commenters agreed that two weeks, 30 or 60 days is a reasonable timeframe for PHAs to complete final eligibility determinations. Other commenters noted that more time may be required on a case-by-case basis, to ensure proper eligibility review. Some commenters also suggested a 15-day timeframe to complete final eligibility determination for applicants on owner-maintained waiting lists. A commenter suggested that PHAs determine the timeframe for final eligibility determinations, because the PHAs may face uncontrollable factors that require more time than 30 days.

One commenter encouraged HUD to include in this final rule a reference to the authority granted to applicants by the last sentence of section 8(o)(13)(K), the Vacancies statutory provision, to bring legal actions to compel a PHA to reduce the number of PBV units committed under the contract if a unit is vacant for more than 120 days and use the funds for additional tenant-based assistance.

A commenter encouraged HUD to provide PHAs 30 calendar days to make an eligibility determination, and another commenter proposed two weeks for a PHA to make final eligibility determination. Another commenter objected to HUD's requirement that owners notify PHAs of actual or expected vacancies, and instead, the commenter proposed that owners refer families on waiting lists to the PHA, in advance of an actual vacancy, to reduce delay in filling the unit. This commenter stated that there is no reason to require a notification because the PHA is not responsible for referring applicants to the owner, rather than referring the selected family to the PHA. The commenter added that owners and PHAs should have a coordinated system to schedule PHA appointments as quickly as possible for the PHA and the selected family. This commenter recommended that PHAs be obligated to make reasonable efforts to promptly make the final eligibility determination and schedule the required oral briefing as well as eligibility. A commenter expressed that HUD should not specify a timeframe for the PHA to complete a final eligibility determination after receiving an application from an owner because PHAs have an interest in making determinations quickly, but frequent extenuating circumstances prolong resolving issues in the interest of the family, owner, or PHA.

*HUD Response:* HUD has reviewed the comments and has determined that in this final rule a 30-day notification to applicants to determine final eligibility determinations is reasonable. If PHAs face uncontrollable factors that require more time than 30 days to complete their final eligibility determinations, then the PHA remains compliant with the regulation so long as PHAs make every reasonable effort to complete the determination within the required timeframe. This final rule also continues to require an owner to notify the PHA of actual or expected vacancies.

**42. Security Deposit: Amounts Owed by Tenant (§ 983.259)**

A commenter supported HUD's proposed prohibition on charging a PBV-assisted family a higher security deposit than an unassisted family because it encourages and authorizes source of income discrimination.

*HUD Response:* HUD appreciates the public comment supporting the addition of § 983.259(b) prohibiting a PHA from charging assisted tenants security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants and adopts this language in this final rule.

**43. Overcrowded, Under-Occupied, and Accessible Units (§ 983.260)**

*Question 33. Are these proposed timeframes reasonable?*

Several commenters viewed the 30-day timeframe for the PHA to provide notice to the family and owner to remain in a wrong-sized unit, as well as the 90-day timeframe in which the family must move out, as reasonable if PHAs are permitted to extend the timeframe when needed.

Other commenters opposed HUD's timeframes for a family to move from wrong-sized or accessible units. One commenter stated that the timeframes are overly strict for the PHA to notify a family and owner that they are placed in either an overcrowded, under-

occupied, or accessible unit. This commenter stated that a longer timeframe is reasonable because PHAs need time for processing, and the family should be given adequate time to find a suitable home rather than taking the first unit available. Some commenters suggested increasing the maximum time for a family to move from 90 days to 180 days since this timeframe is for a scenario where the PHA offers ''another form of continued housing assistance (other than a tenant-based voucher)'' which will be subject to the availability of other units within the PBV portfolio which are outside of the family's control. One commenter proposed 180 days to eliminate PHAs having to decide between terminating families or skipping their continued assistance policies. Another commenter suggested that the timeframe should be 90 days or the next annual recertification, whichever is longer, while another commenter found 90 days as a more appropriate notification deadline and 180 days sufficient time to move. One commenter disagreed with the 90-day timeframe because PHAs with a large population in RAD units may lack sufficient turnover to support families moving out of wrong-sized units, and the 90-day limit would create an inconsistency and an unfair standard for PHAs in low-vacancy areas which usually allow 120 days for use of vouchers. This commenter supported PHAs having discretion to determine appropriate timeframes for local conditions and specify those policies in the Administrative Plan. Another commenter found the 90-day timeframe insufficient considering the current housing crisis and the need for additional time for families to locate alternative units.

One commenter requested that HUD clarify § 983.260(c)(2) to express that the timeframe begins once the PHA offers the family assistance in another unit and not from the time that the PHA determines the family is in the wrong-sized unit. Another commenter stated that HUD's proposal is not required by HOTMA and does not recognize the limits imposed by PBV turnover and right-sized unit availability, whether with external partners or within a PHA's agency-owned portfolio. Another commenter expressed that for families that live in a wrong-sized PBV unit or a unit with unneeded accessible features, the PHAs should offer the option to move with the next available tenant-based voucher, and if the voucher is unavailable or is not the family's preference, then the PHA should offer the family alternative housing assistance. The commenter also disagreed with the option of reducing the number of units under the PBV contract because a PHA is unlikely to reduce the subsidy attached to the project to offer the tenant a suitable alternative unit, unless the PHA has no tenant-based voucher available within a reasonable time and does not own public housing, and the owner has no turnover in a suitable unit. The commenter further stated that the rule should require PHAs to help families locate a new suitable unit with the tenant-based voucher they receive to relinquish correct-sized and accessible units, which is required under § 982.403 and is consistent with HOTMA requirements to assist families that need to move due to unrepaired unit defects. One commenter stated that the proposed timeframes are overly prescriptive and administratively burdensome for PHAs to follow.

*HUD Response:* This section outlines steps the PHA must take when they have determined a family is occupying a wrong-sized unit (according to the PHA subsidy standards), or a unit with accessibility features that the family does not require, and the unit is needed for another family that requires the unit's accessible features. Under these circumstances, it is necessary that the family move and to provide certainty regarding the amount of time a family may remain in the unit. In response to concerns raised, in this final rule, HUD lengthens the amount of time the PHA is afforded to offer a form of continued assistance, in accordance with § 983.260(b), to within 60 days of the PHA's determination.

The 90-day timeframe, related to the termination of the housing assistance payments for the wrong-sized or accessible unit and removal of the unit from the HAP contract, begins once the PHA offers a form of continued assistance. The comments submitted to HUD are persuasive that a more flexible timeframe would be more practical to suit the needs of the family moving out, the unit owner, a prospective family moving in, and the PHA. At the same time, for certainty, accountability, and to encourage the owner to continue to make their unit with accessible features available to the PHA's HCV program, some limits on the timeframe need to be maintained. Therefore, HUD has included revisions at § 983.260(c)(2)(i) and (iii) to include additional flexibility in the form of the option for a family to request and the PHA to grant one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing.

In accordance with § 983.260(b)(1), the continued assistance offered may be in the form of project-based voucher assistance in an appropriate-size unit (in the same project or in another project); other project-based housing assistance (*e.g.,* by occupancy of a public housing unit); tenant-based rental assistance under the voucher program; or other comparable tenant-based assistance. Based on comments received, a new section was added at § 983.260(b)(2) that requires the PHA to remove the wrong-size or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher if no continued housing assistance under paragraph (b)(1) is available. The unit can then be reinstated after the family vacates the property under a new provision at § 983.260(d). This will support the availability of funding the PHA can use to assist the family with continued assistance.

**44. Family Right To Move (§ 983.261)**

*Question 40: Right To Move and § 983.261*

One commenter suggested that HUD clearly define the first year of occupancy in § 983.261(a). A commenter recommended that § 983.261 clearly state the roles and responsibilities of domestic violence survivors and PHAs, considering that some PHAs view their obligation to provide continued assistance to a survivor as discretionary. This commenter suggested clarifying that a ''PHA must assure that the victim retains assistance'' and ''must'' offer continued tenant-based assistance, subject to availability of funds. One commenter suggested § 983.261(d) have a VAWA exception, because survivors should not be penalized and lose tenant-based assistance if they must terminate their lease before the end of the one-year requirement because of violence. This commenter offered the following suggestions: (1) allowing a survivor to request another form of assistance before the family issues a written notice to vacate, at the time it issues the notice, or thereafter; (2) the PHA should also offer a tenant-based voucher or comparable tenant-based rental assistance if the notice to vacate is due to violence; and (3) if such assistance is not available, then the survivor should receive priority for the next tenant-based voucher and the PHA should be encouraged to reach out to area PHAs (with survivor consent) about available units or vouchers. In case the survivor

does not feel safe in the existing unit, the commenter recommended that the PHA provide a safe unit in the interim while the survivor waits for the tenant-based voucher or allow the survivor to transfer to another PBV unit.

Another commenter stated that under § 983.261, the PHA should demonstrate the availability of tenant-based vouchers for eligible PBV families that exercise their right to move based on tenant-based voucher attrition rate. This commenter also recommended that HUD expand the PHA's discretion to set timeframes, and not be limited to ''any time after the first year of occupancy'' under § 983.261(a)), if the project provides housing assistance to families that require intensive supportive services. Another commenter recommended that HUD clarify § 983.261 to include language on terminations, by stating that a family living in a PBV-assisted unit for 12 months that has requested an HCV need not stay in the PBV unit while waiting for the transfer, as well as that a PHA may not terminate the tenants from the PBV program. One commenter suggested that HUD expand the list of reasons for transfer to include intimidated witnesses and crime victims before the one-year transfer period. A commenter suggested HUD clarify that the tenant is not automatically provided HCV assistance after 1 year of lease, and that the tenant may apply for the transfer list and may receive assistance when a voucher is available.

One commenter recommended clarifying in the rule that PHAs should periodically notify families of the right to move with continued tenant-based rental assistance, which could be provided as part of the regular income recertification process. This commenter suggested that HUD clearly state the actions the PHA must take if neither a regular voucher nor ''comparable tenant-based rental assistance'' is available at the family's requests because basic due process requires that PHAs maintain a written list of families that have requested a voucher to move from a PBV property after 12 months of occupancy and have a right to receive the next available voucher or comparable assistance.

Other commenters stated that § 983.261 is clear, but suggested splitting § 983.261(c)(1) into additional sentences for clarity.

*HUD Response:* HUD has revised this section by adding titles and reorganizing information so that the requirements are easier to follow. HUD added language to §§ 983.261(a) and 983.261(d) that clarifies the family must have received PBV assistance for at least a year to be eligible for continued assistance under § 983.261(b). The eligibility for continued assistance is based on the total length of time a family has received PBV assistance and not the length of time the family has resided in the PBV unit. Section 983.261(a) does not prohibit a family from terminating their lease prior to a year, just doing so would make them ineligible for continued assistance. At any time, the family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease, unless the family meets the exclusion criteria at § 983.261(e) related to VAWA.

The new § 983.261(f) further clarifies that PHAs must address project-based vouchers in their Emergency Transfer Plan consistent with the requirements in 24 CFR 5.2005(e), including when the victim has received PBV assistance *for less than one year* and is *not eligibl*e for continued assistance under § 983.261(b). Under a PHA's existing VAWA obligations, a family may still potentially receive tenant-based rental assistance as an external emergency transfer, even if they have not received PBV assistance for more than a year. The emergency transfer requirements do not supersede any eligibility or occupancy requirements that may apply under a covered housing program (§ 5.2005(e)(13)). This language was added to clarify the requirement of planning for these situations, but HUD cannot supersede the eligibility requirements of continued assistance. To assist the family's understanding of their right to move and the PHA's implementation of these policies, HUD has added language to §§ 983.261(b) and 983.261(c) that outlines the right to move information that must be included in the Administrative Plan, including their written policy on whether the PHA will offer families continued assistance under the voucher program or other comparable tenant-based rental assistance, procedures for how the family must contact the PHA, and how the PHA documents families waiting for continued tenant-based rental assistance.

**45. When Occupancy May Exceed the Project Cap (§ 983.262)**

*Question 34: Does the proposed rule sufficiently address the project cap requirements in relation to a unit losing its excepted status?*

A commenter stated that § 983.262(f) (now moved to § 983.262(b)(4) in this final rule) sufficiently addresses the project cap requirements in relation to a unit losing its excepted status.

Another commenter suggested adding: ''or a family eligible for supportive services, or a family that otherwise qualifies to reside in an excepted unit under paragraphs (c) or (d) of this section'' to § 983.262(b). The commenter encouraged HUD to clearly state in § 983.262(c) (now moved to § 983.262(d)(3) in this final rule) the qualifications for the supportive services exception, including: (1) if any member of the family is eligible for one or more of the available services; (2) if a member of the family successfully completes a service program and subsequently no other member of the household is eligible for one of the offered services. The commenter also proposed that HUD revise the third sentence of § 983.262 to clearly state that the exception applies even if the household member who successfully completes a service program leaves the household.

*HUD Response:* HUD appreciates the edits offered by commenters and believes changes to this section provide additional clarity. The proposed regulation conveyed that the unit retains its exception if any member of the family resides in the unit (not just the member that successfully completed the supportive services) and HUD, therefore, does not believe an edit is required to provide that clarification.

**46. Determining the Rent to Owner (§ 983.301)**

*Question 37: Streamlining HUD's Utility Allowance Policies Across the RAD PBV, Traditional PBV, and HCV Programs*

One commenter recommended providing PHAs with maximum flexibility in setting utility allowances for RAD PBV, traditional PBV, and HCV, noting that the statute is not very proscriptive. Another commenter stated that HUD should allow all of these programs to use the same utility allowance. A commenter stated that allowing project owners and PHAs to utilize project-specific UAs at traditional PBV properties will streamline policies between RAD PBV units and traditional PBV units and will streamline UA requirements between traditional PBV units and HOME program requirements which are incompatible and require regulatory waiver.

*HUD Response:* PHAs have the ability to use the same UA for RAD PBV, traditional PBV, and HCV by using the PHA's HCV UA schedule for all of these programs. Through this final rule, PHAs will have the additional flexibility of setting an area-wide EEUA that may also

be used for qualified energy-efficient RAD PBV and traditional PBV properties. Project-specific UAs add complexity, but they are optional for PHAs to implement. HUD may provide additional flexibility for setting project-specific UAs, however, HUD must ensure the policy results in accurate UAs that do not overly burden tenants. HUD recognizes the need to consider the alignment of project-specific UAs with other programs like HOME and will consider this in a notice implementing project-specific UAs.

*Question 38: Should HUD permit the use of a project-specific utility allowance schedule for the HCV program?*

Many commenters supported HUD allowing project-specific UAs. Some commenters said PHAs should have maximum flexibility in setting project-specific UAs, while others recommended HUD issue more requirements to ensure project-specific UAs do not negatively impact families. Commenters stated that project-specific UA schedules would eliminate conflicts with other funding sources, including HOME. One commenter recommended that PHAs have the discretion to allow project-specific UAs on a case-by-case basis or throughout their HCV program to ensure families neither experience an undue cost nor are discouraged from conserving energy.

Commenters stated that any requirement to implement site-specific UAs would be administratively burdensome for the PHA, stating that it would not streamline requirements across programs and that PHAs' SEMAP scores may be negatively impacted due to difficulties in applying the correct UA schedule. Commenters stated that HUD's efforts to reduce program expenditures and promote energy efficiency need to be consistent with statutory tenant affordability protections. Another commenter noted that HUD has not provided evidence that reduced UAs will promote energy conservation and that the relationship between reducing UAs and avoiding wasteful consumption is tenuous considering the relative inelasticity of demand for energy among low-income households.

Another commenter stated that while a project-specific UA is appropriate in instances where another housing program has established an alternative EEUA, the standard should be based on accuracy and not whether allowances would create an undue cost on families or discourage efficient use of HAP funds. A commenter recommended that HUD should remove the requirement to have PHAs update UA schedules when there is a rate change of 10 percent or more; streamlining would be achieved if the local HUD field office performs the UA analysis for their respective geographic areas. Another commenter proposed that HUD issue UAs based on locality like FMRs.

Commenters recommended that HUD delay making this provision effective until it can issue further guidance providing specific standards and requirements for developing the project-specific UAs and how to ensure tenants are not negatively impacted and allowing for public comment. Commenters additionally expressed that using average consumption of the dataset is unreasonable for low-income tenants because it results in effectively 50 percent of the tenants receiving a UA that is too low. Commenters also supported consideration of the impact of time-of-use rate plans and tenants with special needs or larger families, which require higher consumption for special equipment or because tenants spend more time at home. Project-specific UAs that are determined based on an engineering analysis need to be carefully reviewed and subject to a periodic adjustment to ensure they reflect actual costs in the project. This commenter recommended HUD apply the same methodology for multifamily properties, which uses actual consumption data. One commenter recommended that HUD's approval process include adequate notice and comment for PBV tenants affected by any PHA proposal submitted to HUD, as well as require that PBV tenants timely complete supporting information, and receive adequate time for analysis (at least 60 days), because the data complexity will usually require additional expertise.

One commenter stated that there should be no need for a PHA to engage another independent entity to approve proposed project-specific UAs, as HUD's independent review and approval should be sufficient to avoid a conflict of interest.

*HUD Response:* HUD appreciates commenters' support of project-specific UAs. Project-specific UAs provide an opportunity for streamlining and a more accurate UA based on project-specific consumption data that will (1) allow projects to be viable where the area-wide utility allowance is unnecessarily high, and (2) ensure participants living in the same property are receiving the same UA subsidy. Per § 983.301(f)(4) PHAs that implement a project-specific UA for a PBV property must use the same UA for tenant-based participants residing in that project. To ensure this policy is clear, HUD has added this requirement into this final rule in part 982 (§ 982.517(b)(2)(iv)). While project-specific allowances may cause some burden to administer, they are completely optional. PHAs must consider the costs and benefits to their specific program and the impact on families before deciding to request a project-specific UA.

Many suggestions were made on how to protect participant families from having a project-specific UA that is too low. HUD agrees that further protections are needed to ensure that families are not negatively impacted. HUD clarified under § 983.301(f)(4) that § 982.517(c) applies and an annual review of rates is required. HUD added that PHAs must review project-specific UAs after one year if they were not based on actual consumption data. Additional time is required to develop a process that ensures PHAs and PBV property owners are adequately considering the impact of project-specific UAs on families. HUD will continue to process these requests as waivers at HUD Headquarters until more guidance is issued via notice.

HUD appreciates the commenter's suggestion that PHAs should have the flexibility to apply project-specific or case-specific UAs for any HCV tenant, but this policy would be very difficult to manage and even more difficult to provide effective oversight. UAs provide for some adjustments through specific policies without creating a separate utility allowance for every HCV participant. Families that have additional utility allowance needs due to individual circumstances related to a disability are always able to request a reasonable accommodation (§ 982.517(e)). This applies to participants in the project-based and tenant-based programs. HUD is amending this final rule to clarify that reasonable accommodation UAs will not impact the determination of the contract rent for project-based units. Instead, the cap on contract rent will be determined using the appropriate area-wide UA (§ 983.301(f)(5)).

HUD has removed the regulatory requirement in § 983.301(g) that PHAs have an independent entity determine the project-specific UA for PHA-owned units. HUD will establish requirements for project-specific UAs in PHA-owned units in a **Federal Register** notice.

*Request for Clarification*

A commenter suggested HUD clarify § 983.301(b)(1) by including that the rent to owner can differ from the PHA's payment standard for the HCV program, as the statute specifies, since many

PHAs and other stakeholders have not understood this flexibility.

*HUD Response:* HUD believes that § 983.301(b)(1) is sufficiently clear that the rent to owner can differ from the PHA's payment standard for the HCV program. However, HUD has taken this opportunity to clarify the corresponding provision at § 983.2(c)(6)(i) and the § 983.301(b)(1) language regarding when the PHA may use an amount greater than 110 percent of the applicable FMR in its calculations.

**47. Redetermination of Rent to Owner (§ 983.302)**

*Question 39: Agreeing to Maximum OCAF Adjustments*

Commenters supported implementing the HOTMA provisions allowing an owner to request additional changes up to the statutory maximum if the OCAF is insufficient because these changes would help make PBV projects more competitive. A commenter suggested HUD consider this limit to be duplicative, because rent reasonableness standards must still be met, in effect keeping the rent amount in check. Another commenter stated that owners subject to OCAF should have the benefit of having the full OCAF percentage applied to better manage operations and improve on a property's ability to cover existing debt, and that further reducing the applicable percentage increase to properties puts additional financial strain on owners.

*HUD Response:* HUD appreciate the comments; however, HUD does not consider the PHA's rent limit to be duplicative rent reasonableness standards because the PHA may have reason to set the limit below the reasonable rent. Under this final rule, HUD retains the requirement that the increases through OCAF may not exceed the maximum rent for the PBV project, as determined by the PHA pursuant to § 983.301 as proposed.

*Align OCAF Adjustments With Other Programs*

Commenters recommended a ''lesser of'' test, like that used in the Mod Rehab program, of OCAF or 110 percent of FMR. A commenter suggested PHAs should have sole discretion to choose OCAF or 110 percent of FMR, if HUD determines that the PBV rent increase amount should be discretionary. A commenter recommended HUD treat OCAF adjustments in a traditional PBV context the same as it would in a RAD PBV context and as permitted elsewhere for properties with HUD section 8 contracts. This commenter noted that OCAF adjustments applied elsewhere in the PBV program should not be arbitrarily capped by the FMR and SAFMR established by HUD. The commenter also encouraged HUD to explore ways in which the FMRs and SAFMRs can be better aligned with rent reasonableness assessments to ensure that FMRs and SAFMRs are able to keep up with the OCAF adjustments that properties receive, which would avoid this problem altogether.

*HUD Response:* HUD declines to adopt the commenter's recommendation to use a ''lesser of'' test and retains the proposed rule policy, as described earlier in this section of the preamble. HUD intends to consider this rule's applicability to RAD, given HUD's waiver authority with respect to RAD, following publication of this final rule. HUD continues its commitment to ensuring FMRs and SAFMRs are accurate and updated.

*OCAF Adjustments to Units Not Otherwise Regulated by Local Rent Increase Regulation Related Rules*

A commenter suggested providing the option of OCAF adjustments to those units that are not otherwise regulated by local rent increase regulations or any other regulatory agreement.

*HUD Response:* HUD has reviewed the comment and has determined, as a matter of equitable treatment, all OCAF adjustments will remain aligned in accordance with the statutory provision in section (8)(o)(13)(H) of the 1937 Act.

*Automatic Adjustments*

A commenter supported the inclusion of OCAF rent increases as a discretionary option for PHAs. One commenter stated that PHAs would risk funding shortfalls if they guaranteed annual rent adjustment, and some owners may not request an increase every year, which benefits the PHA because it allows for those funds to be used elsewhere and for units in higher-cost areas.

*HUD Response:* HUD acknowledges commenters' support. HUD is maintaining automatic adjustments pursuant to § 983.302(b) which states that a rent increase may occur through automatic adjustment by an operating cost adjustment factor (OCAF) or as the result of an owner request for such an increase. However, the OCAF option is optional and PHAs concerned about shortfalls or anticipating a lower owner request may decide not to use OCAFs.

*Periodic Adjustment Frequency*

One commenter recommended that HUD also clarify proposed § 983.302(b)(2)(ii)(B) to state that periodic adjustments above the OCAF-adjusted rent level may be less frequently than annually. This commenter also suggested that the contract specify how frequently a PHA must consider such requests if made by the owner, because allowing increases annually, beyond the OCAF level, would undermine the time- and cost-saving purpose of using an OCAF.

*HUD Response:* HUD appreciates the commenter's suggestion. HUD decided to allow adjustments to occur during the term of the contract and prohibit a rent adjustment by an OCAF from exceeding the maximum rent (see § 983.302(b)(2)(i)). HUD also declines to require that the HAP contract specify how frequently a PHA must consider rent increase requests. Instead, as noted in this final rule, an owner can make a written request for a rent increase at any time during the term of a HAP contract. Lastly, as a point of clarification, the proposed § 983.302(b)(2)(ii)(B) has been relocated in this final rule to § 983.302(b)(3)(i).

*Rent Floor*

One commenter supported HUD's proposal to allow PHAs to reduce PBV rents below the initial rent to owner at any time during the HAP contract. The commenter further urged HUD to provide PHAs the tools to rectify unintended negative consequences stemming from an unestablished floor for rents and PBV rents falling below their initial rents, harming the initial underwriting.

*HUD Response:* HUD has considered the comment and determined that it should remain within PHA discretion whether to reduce rents below the initial rent to owner at any time during the HAP contract. HUD believes that PHAs are in the best position to balance local considerations in making such a determination. Therefore, in this final rule, HUD has deleted the sentences of the proposed rule that said: ''If the rents have already been reduced below the initial rent to owner, the PHA may not make such an election as a way to increase the rents. If rents increase (pursuant to paragraph (b) of this section) above the initial rent to owner, then the PHA may once again make that choice.''

**48. Additional Requests for Comment**

*Question 41. HUD Is Interested in Aligning PBV Program Requirements With Housing Trust Fund (HTF) Program Requirements and Solicits Input From Stakeholders Regarding Areas in Which Alignment Will Be Particularly Beneficial*

One commenter recommended modifying PBV affordability terms to 30-year contracts to mirror HTF to address the incompatibility between affordability requirements as well as remove the challenge in obtaining financing.

Other commenters supported HTF requirements conforming to the HCV/PBV requirements, rather than the opposite. A commenter encouraged HUD to work with state HTF funding recipients to incorporate preferences and/or additional points in the HTF Allocation Plans for applicants that seek to couple the receipt of HTF funds with section 8 project-based vouchers. This commenter also supported streamlining environmental review requirements under § 983.301(f) and substantial rehab/new construction through parts 50 and 58, as well as HUD allowing a single environmental review to satisfy the requirements for both HTF and the PBV program. The commenter stated that the proposed suggestion is needed because of HUD's increased flexibility due to the absence of a HTF statutory environmental review requirement. Furthermore, the commenter stated that the current requirements often result in projects receiving HTF and PBV funding to undergo separate and duplicative environmental reviews.

Another commenter suggested that additional vouchers be made available to communities that offer resources for low-income households, including access to public transportation and jobs, where rents are prohibitive. This commenter also suggested using a voucher pool to connect developments that have HTF investments to bring development and operation funding to create more opportunities.

*HUD Response:* HOTMA section 106(a)(4) does not allow for the contract to go beyond an initial term of 20 years; however, a PHA may execute any number of extensions (for terms up to 20 years each) such that there are up to 40 remaining years on the contract, further explained above in this discussion of comments regarding § 983.205.

Amendments to the HTF program requirements are beyond the scope of this rulemaking. Nonetheless, where the State is selecting HTF applications submitted by eligible recipients, HUD notes that the HTF Allocation Plan requires HTF grantees to provide priority for funding for projects with Federal project-based rental assistance. See 24 CFR 91.320(k)(5). The underlying PBV environmental review requirements generally are statutory; HUD cannot unilaterally amend the applicability of NEPA and other laws and executive orders. HUD notes that the HTF environmental provisions are outcome-based and exclude certain consultation procedures that are otherwise required for environmental reviews under 24 CFR parts 50 and 58. HUD intends to consider these comments for future collaborations with the HTF program.

HUD allocates funding that can be used for project-based vouchers at the PHA's discretion. How PBV funding is allocated is an essential program requirement and revising it is beyond the scope of this rulemaking. See response below to Question 43 for additional information on how PBV works and is funded.

*RAD and Transfers of Assistance (Answers to Question 42)*

Commenters suggested that HUD create a new regulatory provision governing the transfer of assistance. One commenter suggested that HUD should allow both partial and full transfer of PBV assistance from one project to another. Other commenters suggested that the transfer be a voluntary agreement modeled after the PBRA provision. Some commenters stated that HUD should keep the transfer of assistance process as clear and simple as possible, as it has progressively become overregulated, with two of these commenters citing specifically the environmental review process and the inspection process. One commenter stated that the local PHAs can and should make the appropriate policy regarding when PBV assistance, which they awarded and oversee, can be transferred to another property.

A commenter stated that PHAs should continue to use their vouchers awarded in connection with the Rental Assistance Demonstration (RAD) where appropriate and in compliance with the HAP contract. Another commenter stated that additional regulatory provisions are not required to govern transfers of HAP contracts because PHAs will not experience a reduction in Annual Contributions Contract (ACC) authorized units when terminating a PBV HAP contract; instead, HUD should address needs on a case-by-case basis. This commenter also stated that HUD should eliminate the 1-year notice of termination when PBV assistance is relocated without a gap in subsidy, so long as any relocation is conducted in accordance with applicable Federal requirements.

One commenter recommended defining a RAD project based on its funding stream or ownership structure, rather than lots or sites. One commenter also recommended that HUD allow PHAs flexibility to develop new PBV or public housing units if it does not exceed its Faircloth limit.

A commenter suggested that regulations governing RAD transfers of assistance consider the following factors: (1) placing proposed transfers of assistance in the PHA Annual or MTW Plan and ensuring consistency with the Consolidated Plan as well as improving the resident notification and consultation requirements triggered with a transfer of assistance and having each transfer meet the notice and comment requirements; (2) transfers of assistance must receive certificates of compliance for fair housing and civil rights requirements and undergo multiple reviews such as: HUD's civil rights review, review for compliance with site selection standards under § 983.55, 8(bb), poverty concentration standards, change in number of units, availability of accessible units or units for families with children, change in admission preferences, relocation, and change in income eligibility; (3) explicitly prohibiting re-screening tenants for factors such as criminal history and credit scores as well as not applying new screening criteria to a family coming from public housing and prohibiting unreasonable screening criteria in subsequent recertifications; (4) prohibiting PHAs from changing unit type or size without the written consent of the individual tenants; (5) refusing involuntary permanent relocation, however explicitly stating the voluntary relocation processes, including the option to select a public housing unit of the PHA, and the PHA/owner must document compliance with Uniform Relocation Act (URA) and RAD relocation rights and publicize those records to HUD upon request; (6) HUD should closely evaluate and promulgate specific rules for transfers of assistance far from the current RAD site, and consider whether the distance would impose a significant burden on residents' access to existing employment, transportation options, schooling or other critical services, and whether the transfer advances or impedes fair housing and de-concentration goals; and (7) section 3 obligations once transfers are combined with rehabilitation and new construction.

*HUD Response:* HUD has considered the comments and agrees that it is unnecessary to create a new regulatory process by which PBV assistance may be transferred from one property to another (though HUD has expanded options for termination of PBV contracts at § 983.206). Under this final rule, a PBV contract may terminate, as provided in § 983.206, with no corresponding reduction in the PHA's ACC units or HAP allocation. A PHA may, in conjunction with such termination, engage in the selection process in § 983.51 to select and place under contract a different PBV project, subject to all requirements of part 983. A PHA may give preference to families living in the former PBV project who wish to move (voluntarily) to the new PBV project, so long as such preference is consistent with the requirements of § 982.207, and subject to the provisions regarding in-place families at § 983.251(b), accessible units at § 983.251(c)(9), and excepted units at § 983.262(b)(2). This final rule therefore gives sufficient flexibility to PHAs to end PBV assistance at one project and begin PBV assistance at another.

HUD has reviewed the suggestions that transfer of assistance be modeled on Project-Based Rental Assistance (PBRA) transfers and determined that parallel conditions, namely with respect to HUD oversight and funding authority, do not exist in the PBV program that would enable use of the same process. Additionally, HUD does not have the statutory authority to alter several provisions of part 983 to facilitate a transfer of PBV assistance as other commenters suggested. These provisions include environmental review, inspection, and the one-year notice of contract termination. HUD notes that, aside from this statutory limitation, these aspects of the PBV program are critical elements to the purpose and functionality of the PBV program and to ensuring PBV tenants reside in decent, safe, and sanitary housing.

HUD notes that the provisions for RAD transfer of assistance, and other RAD requirements, continue to be located in the governing notices for the RAD program and are not altered by this final rule. HUD finds it inappropriate to codify in part 983 the alternative provisions created pursuant to waiver authority specific to the Demonstration. HUD encourages commenters wishing to revise the RAD requirements to respond to requests for comment on RAD provisions in the **Federal Register**. HUD further notes that PBV units are unrelated to PHAs' Faircloth authority and HUD will not consider changes to Faircloth authority as it relates to the public housing program as part of this rulemaking, given the need for robust public comment on that topic.

*Question 43: Executive Order 13878 and Affordable Housing*

Commenters suggested that HUD condition its funding to localities that reduce local barriers against expensive projects and provide funding only if local governments provide local fee reductions for affordable housing or adopt by-right zoning.

One commenter recommended that HUD increase the allocation of PBVs that PHAs could apply for. This commenter also suggested making the applications for the new PBVs available to jurisdictions that demonstrate that they are reducing local regulatory burden such as permitting streamlining, fee waivers, and caps on local developer fees, to incentivize decreased development and production cost.

Another commenter suggested that HUD should not consider any policies relating to PBVs designed to incentivize communities to reduce local regulatory barriers to development and production of housing. Instead, the commenter proposed that local housing authorities should be allowed to implement PBVs based on their local conditions. This commenter suggested that HUD use direct rewards and other programs relating to those municipal jurisdictions as an incentive to change local rules, instead of using the PHA as the middleman.

*HUD Response:* The PBV program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD (§ 983.5(a)(1)). If a PHA decides to operate a PBV program, the PHA's PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA's voucher ACC. This pool of funding is used to pay housing assistance for both tenant-based and project-based voucher units and to pay PHA administrative fees for administration of tenant-based and project-based voucher assistance, and there is no special or additional funding for project-based vouchers (§ 983.5(b)). Additionally, A PHA has discretion whether to operate a PBV program (§ 983.5(c)). These are essential program requirements HUD will not change and implementing the recommendations would fundamentally alter how the PBV program works and is funded.

**Typographic Corrections**

One commenter had the following typographical corrections: corrected § 983.5(3) to cite to § 983.154(e) and not § 983.155(e), which does not exist; corrected the reference in § 983.52(d) to § 983.155(e), which should be to § 983.154(e); suggested HUD use ''new'' instead of ''newly'' in § 983.12(a) and elsewhere for consistency; in § 983.59(a), suggested HUD delete ''for exclusion'' to avoid redundancy; in § 983.59(e), corrected two references to ''program limitation'' that should be ''program cap;'' and in § 983.204(d)(2)(iii), this commenter suggested replacing ''PHA functions in accordance'' with ''PHA functions identified in.''

*HUD Response:* HUD thanks the commenter for these comments. HUD has revised the reference to § 983.155(e) in § 983.5(a)(3) (the reference is now to § 983.154(f), due to this correction and renumbering that occurred in this final rule) and has removed § 983.52(d). The term ''newly'' must continue to be used in the context of regulations concerning ''newly constructed housing'' as defined in § 983.3(b), to maintain consistency with that term and definition, as well as to avoid confusion with the activity of new construction applicable in other contexts within the PBV regulations. However, HUD notes that ''rehabilitation'' as used in proposed § 983.12(a) was not consistent with the term ''rehabilitated housing'' at § 983.3(b), so has amended that term accordingly. HUD disagrees with removal of the term ''for exclusion'' in § 983.59(a). However, HUD notes that the two references to ''program limitation'' as used in proposed § 983.59(e) were not consistent with the term ''program cap,'' so HUD has amended that term accordingly. HUD agrees with the commentor's suggestion to replace the language ''PHA functions in accordance'' with ''PHA functions identified in'' at § 982.451(c)(2)(iii) and § 983.204(f)(iii).

**General Comment**

One commenter suggested that HUD allow PHAs to convert public housing to PBV without HCV to retain the PBVs, for ACC unit consistency and to benefit PHAs going through the RAD process.

*HUD Response:* PHAs must have an ACC to administer a voucher program, per § 982.151. This is an essential requirement which HUD will not change.

**VI. Findings and Certifications**

*Regulatory Review—Executive Orders 12866, 13563, and 14094*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order 12866, among other things.

This final rule would update HUD's regulations for the HCV and PBV programs to conform to changes made by HOTMA. These changes include alternatives to HUD's HQS inspection requirement, establishing a statutory definition of PHA-owned housing, and other elements of both programs, ranging from owner proposal selection procedures to how participants are selected. In addition to implementing these HOTMA provisions, HUD has included changes that are intended to reduce the burden on public housing agencies, by either modifying requirements or simplifying and clarifying existing regulatory language.

This final rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the Order). HUD has prepared a Regulatory Impact Analysis (RIA) that addresses the costs and benefits of this final rule. HUD's RIA is part of the docket file for this rule, which is available for public inspection at *www.regulations.gov*.

*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.

For purposes of this rule, HUD defines a small PHA as a PHA for which the sum of the number of public housing dwelling units administered by the agency and the number of vouchers is 550 or fewer. There are approximately 2,700 such agencies; some are voucher-only, some are combined, some are public housing-only. HUD includes all of these agencies among the number that could be affected by the proposed rule. For those that operate voucher programs, the potential to be affected is evident. For public housing-only agencies, the potential effect of this final rule depends on whether the agency removes its public housing from the public housing program via one of the available legal removal tools, then project-bases any tenant protection vouchers awarded in connection with that removal.

This final rule revises HUD regulations to reduce the burden on or provide flexibility for all PHAs, owners, and other responsible entities, irrespective of whether they are small entities. For example, this final rule leverages Small Area Fair Market Rents to provide PHAs with greater autonomy in setting exception payment standard amounts. It will implement HOTMA's exceptions to the program and project caps under the PBV program, such as authorizing a PHA to project-base 100 percent of the units in any project with 25 units or fewer. It extends from 15 to 20 years the permissible duration of a PBV HAP contract, resulting in less frequent need for extensions, and eliminates the three-year window during which units may be added to an existing contract without a PHA issuing a new request for proposals (RFP). The rule will eliminate extraneous requirements specific to the project-basing of HUD–VASH and FUP vouchers, if project-basing is done consistent with PBV program rules. It will provide PHAs with greater flexibility in the establishment of utility allowance schedules. It will also implement new discretionary authority for a PHA to enter into a PBV HAP contract with an owner for housing that is newly constructed or recently rehabilitated, as long as PBV program rules are followed, even if construction or rehabilitation commenced prior to the PHA issuing an RFP. HUD estimates that such changes have the potential to generate a range of cost savings but is unable to estimate the number of small entities that would experience cost savings as a result of changes proposed by this rule, as such savings depend largely on actions that PHAs will take (or not) at their own discretion.

For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*Information Collection Requirements*

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0226. In accordance with the Paperwork Reduction Act, 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 currently valid OMB control number.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of UMRA.

*Environmental Review*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online at *www.regulations.gov*.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

**Lists of Subjects**

*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 8*

Administrative practice and procedure, Civil rights, Equal employment opportunity, Grant programs-housing and community development, Individuals with disabilities, Loan programs-housing and community development, Reporting and recordkeeping requirements.

*24 CFR Part 42*

Administrative practice and procedure, Grant programs, Loan programs, Manufactured homes, Rates and fares, Relocation assistance, and Reporting and recordkeeping requirements.

*24 CFR Part 50*

Environmental impact statements.

*24 CFR Part 91*

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, and Reporting and recordkeeping requirements.

*24 CFR Part 92*

Administrative practice and procedure, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 93*

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 247*

Grant programs-housing and community development, Loan programs-housing and community development, Low and moderate income housing, and Rent subsidies.

*24 CFR Part 290*

Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, and Reporting and recordkeeping requirements.

*24 CFR Part 882*

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

*24 CFR Part 888*

Grant programs-housing and community development, rent subsidies.

*24 CFR Part 891*

Aged, Grant programs-housing and community development, Individuals with disabilities, Loan programs-housing and community development, Low and moderate income housing, Public assistance programs, Rent subsidies, and Reporting and recordkeeping requirements.

*24 CFR Part 903*

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 908*

Computer technology, Grant programs-housing and community development, Rent subsidies, and Reporting and recordkeeping requirements.

*24 CFR Part 943*

Public Housing and Reporting and recordkeeping requirements.

*24 CFR Part 945*

Aged, Grant programs-housing and community development, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 960*

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

*24 CFR Part 972*

Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 982*

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 983*

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

*24 CFR Part 985*

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

*24 CFR Part 1000*

Aged, Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5, 8, 42, 50, 91, 92, 93, 247, 290, 882, 888, 891, 903, 908, 943, 945, 972, 982, 983, 985, and 1000 as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.*; 34 U.S.C. 12471 *et seq.*; Sec. 327, Pub. L. 109–115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14156, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

■ 2. Amend § 5.100 by revising the definitions of ''Household'' and ''Responsible entity'' to read as follows:

**§ 5.100 Definitions.**

* * * * *

*Household,* for purposes of 24 CFR part 5, subpart I, and parts 960, 966, 882, and 982 of this title, means the family, foster children and adults, and PHA-approved live-in aide.

* * * * *

*Responsible entity* means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigrations status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

(1) For the Section 235 Program, the mortgagee.

(2) For Public Housing, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

* * * * *

■ 3. Amend § 5.504 by revising and republishing the definition of ''Responsible'' to read as follows:

**§ 5.504 Definitions.**

* * * * *

*Responsible entity* means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigrations status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

(1) For the Section 235 Program, the mortgagee.

(2) For Public Housing, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

* * * * *

**§ 5.514 [AMENDED]**

■ 4. Amend § 5.514 by:
■ a. Adding to the end of paragraph (f)(2)(i)(A), the word ''and'';
■ b. Amending paragraph (f)(2)(i)(B) by removing ''; or'' and adding, in its place, a period;
■ c. Removing paragraph (f)(2)(i)(C); and
■ d. In paragraphs (i)(1) introductory text and (i)(2), removing the phrase ''Rental Certificate,''.

**§ 5.630 [AMENDED]**

■ 5. Amend § 5.630(a)(2) by removing the phrase '', and certificate''.

**§§ 5.632, 5.653, 5.655, 5.657, and 5.659 [AMENDED]**

■ 6. Remove the words ''certificate or'' in the following places:
■ a. Section 5.632(b)(2);
■ b. Section 5.653(a);
■ c. Section 5.655(a);
■ d. Section 5.657(a); and
■ e. Section 5.659(a).

**§ 5.801 [AMENDED]**

■ 7. Amend § 5.801 by:
■ a. In paragraph (a)(2)(ii) removing the word ''Certificate'' and adding, in its place, the word ''Voucher;
■ b. In paragraph (a)(2)(iv) removing the words ''Certificate and'';
■ c. In paragraph (a)(3)(ii) removing the word ''Certificate'' and adding, in its place, the word ''Voucher''.

**§§ 5.853, 5.902, and 5.903 [AMENDED]**

■ 8. Remove ''project-based certificate or'' in the following places:
■ a. In § 5.853(b), in the definition of ''*Responsible entity*'';
■ b. In § 5.902, in the definition of ''*Responsible entity*''; and
■ c. Section 5.903(e)(1)(i)(C).

## PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■ 9. The authority for part 8 continues to read as follows:

**Authority:** 29 U.S.C. 794; 42 U.S.C. 3535(d) and 5309.

■ 10. Amend § 8.28 by:
■ a. Revising the section heading;
■ b. Removing from paragraph (a) introductory text the words ''Existing housing Certificate program or a'';
■ c. Removing ''Housing Certificate or'' from paragraph (a)(3);
■ d. Removing ''Housing Certificates or'' from paragraph (a)(4); and
■ e. Revising paragraph (a)(5).

The revisions read as follows:

**§ 8.28 Housing voucher programs.**

(a) * * *

(5) If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception payment standard under § 982.503(d)(5) for a regular tenancy under the Section 8 voucher program so that the program is readily accessible to and usable by persons with disabilities.

* * * * *

## PART 42—DISPLACEMENT, RELOCATION ASSISTANCE, AND REAL PROPERTY ACQUISITION FOR HUD AND HUD-ASSISTED PROGRAMS

■ 11. The authority for part 42 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 4601, 5304, and 12705(b).

**§ 42.350 [AMENDED]**

■ 12. Amend § 42.350(e)(1) by removing, both times it appears, the phrase ''certificate or''.

## PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

■ 13. The authority for part 50 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4321–4335; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

**§ 50.17 [AMENDED]**

■ 14. Amend § 50.17(e) by removing the word ''Certificate'' and adding, in its place, the word ''Voucher''.

## PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 15. The authority for part 91 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

**§ 91.2 [AMENDED]**

■ 16. Amend § 91.2(c) by removing the words ''Certificate and''.

## PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 17. The authority for part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12701–12839, 12 U.S.C. 1701x.

**§ 92.202 [AMENDED]**

■ 18. Amend § 92.202(b) by removing the citation ''24 CFR 983.57(e)(2) and (3)'' and adding, in its place, the citation ''24 CFR 983.55(e)(2) and (3)''.

**§ 92.253 [AMENDED]**

■ 19. Amend § 92.253(d)(4) by removing the words ''certificate or'', and by removing the phrase ''certificate, voucher,'' and adding, in its place, the word ''voucher''.

**§ 92.508 [AMENDED]**

■ 20. Amend § 92.508(a)(3)(xiii) by removing the citation to ''24 CFR 983.57(e)(2) and (e)(3)'' and adding, in its place, the citation to ''24 CFR 983.55(e)(2) and (3)''.

## PART 93—HOUSING TRUST FUND

■ 21. The authority for part 93 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 12 U.S.C. 4568.

**§ 93.150 [AMENDED]**

■ 22. Amend § 93.150(b) by removing the citation to ''24 CFR 983.57(e)(2)'' and adding, in its place, a citation to ''24 CFR 983.55(e)(2)''.

## PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

■ 23. The authority for part 247 continues to read as follows:

**Authority:** 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

**§ 247.1 [AMENDED]**

■ 24. Amend § 247.1(a) by removing the words ''Section 8 Existing Housing Certificate or''.

## PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES

■ 25. The authority for part 290 continues to read as follows:

**Authority:** 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b, 1715z–11a; 42 U.S.C. 3535(d) and 3535(i).

**§ 290.3 [AMENDED]**

■ 26. In § 290.3, amend the definition of ''Sufficient, habitable, affordable, rental

housing is available'' by removing the words ''certificates or'' from paragraph (4).

**§ 290.9 [AMENDED]**

■ 27. Amend § 290.9 by:
■ a. In paragraph (b)(2), removing the words ''or rental certificate'';
■ b. In paragraph (b)(4):
■ i. Removing the words ''or rental certificate'' from the paragraph heading; and
■ ii. Removing the words ''or certificates''.

■ 28. Revise and republish § 290.19 to read as follows:

**§ 290.19 Restrictions concerning nondiscrimination against Section 8 voucher holders.**

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

**§ 290.39 [AMENDED]**

■ 29. Amend § 290.39(a) by removing the words ''certificate or''.

## PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

■ 30. The authority for part 882 continues to read as follows:

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

**§ 882.514 [AMENDED]**

■ 31. Amend § 882.514(e) by removing the words ''certificate or'' wherever they appear.

## PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

■ 32. The authority for part 888 continues to read as follows:

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

■ 33. Amend § 888.113 by:
■ a. Revising paragraphs (a) and (c)(3), and revising and republishing paragraph (h);
■ b. In paragraph (i)(2), removing the citation ''24 CFR 982.503(f)'' and adding, in its place, the citation ''24 CFR 982.503(g)''; and
■ c. Revising the first sentence of paragraph (i)(3).

The revisions read as follows:

**§ 888.113 Fair market rents for existing housing: Methodology.**

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at the 40th percentile rent, the dollar amount below which the rent for 40 percent of standard quality rental housing units fall within the FMR area. The 40th percentile rent is drawn from the distribution of rents of all units within the FMR area that are occupied by recent movers. Adjustments are made to exclude public housing units and substandard units.

* * * * *

(c) * * *

(3) If a metropolitan area meets the criteria of paragraph (c)(1) of this section, Small Area FMRs will apply to the metropolitan area and all PHAs administering HCV programs in that area will be required to use Small Area FMRs. A PHA administering an HCV program in either a metropolitan area not subject to the application of Small Area FMRs or in a non-metropolitan area for which HUD publishes Small Area FMRs may choose to use Small Area FMRs after notification to HUD. A PHA that exercises this option in one metropolitan area or non-metropolitan county is not required to exercise this option in other metropolitan areas or non-metropolitan counties.

* * * * *

(h) *Small Area FMRs and project-based vouchers.* Unless one of the following exceptions apply, Small Area FMRs do not apply to project-based vouchers regardless of whether HUD designates the metropolitan area or the PHA notifies HUD and implements the Small Area FMRs under paragraph (c)(3) of this section. (See 24 CFR 983.301(f)(3) for separate requirements regarding the applicability of exception payment standards based on Small Area FMRs to PBV projects.)

(1) Where the proposal or project selection date under 24 CFR 983.51(g) was on or before the effective dates of either or both the Small Area FMR designation/implementation and the PHA administrative policy, the PHA and owner may mutually agree to apply the Small Area FMR. The application of the Small Area FMRs must be prospective and consistent with the PHA Administrative Plan. The owner and PHA may not subsequently choose to revert back to the use of the metropolitan-wide or county-wide FMRs for the PBV project. If the rent to owner will increase as a result of the mutual agreement to apply the Small Area FMRs to the PBV project, the rent increase shall not be effective until the next annual anniversary of the HAP contract in accordance with 24 CFR 983.302(b).

(2) Where the proposal or project selection date under 24 CFR 983.51(g) was after the effective dates of both the Small Area FMR designation/implementation and the PHA administrative policy, the Small Area FMRs shall apply to the PBV project if the PHA Administrative Plan provides that Small Area FMRs are used for all future PBV projects. If the PHA chooses to implement this administrative policy, the Small Area FMRs must apply to all future PBV projects located within the same metropolitan area or non-metropolitan county where the Small Area FMRs are in effect for the PHA's HCV program. An owner and the PHA may not subsequently choose to apply the metropolitan area or county FMR to the project, regardless of whether the PHA subsequently changes its Administrative Plan to revert to the use of metropolitan-wide or county-wide FMR for future PBV projects.

(3) For purposes of this section, the term ''effective date of the Small Area FMR designation'' means:

(i) The date that HUD designated a metropolitan area as a Small Area FMR area; or

(ii) The date that HUD approved a PHA request to voluntarily opt to use Small Area FMRs for its HCV program, as applicable.

(4) For purposes of this section, the term ''effective date of the PHA administrative policy'' means the date the administrative policy was formally adopted as part of the PHA administrative plan by the PHA Board of Commissioners or other authorized PHA officials in accordance with § 982.54(a).

(i) * * *

(3) HUD will calculate the 50th percentile rents for certain metropolitan areas for this purpose. * * *

## PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 34. The authority for part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

### § 891.125 [AMENDED]

■ 35. Amend § 891.125(c)(3)(iii)(F) by removing the words ''Certificate and''.

## PART 903—PUBLIC HOUSING AGENCY PLANS

■ 36. The authority for part 903 continues to read as follows:

**Authority:** 42 U.S.C. 1437c; 42 U.S.C. 1437c–1; Pub. L. 110–289; 42 U.S.C. 3535d.

### § 903.3 [AMENDED]

■ 37. Amend § 903.3(b)(2) by adding the words ''and project-based'' after the words ''tenant-based''.

■ 38. Revise § 903.4(a)(2)(i) to read as follows:

### § 903.4 What are the public housing agency plans?

(a) * * *

(2) * * *

(i) Section 8 assistance (tenant-based assistance (24 CFR part 982) and project-based assistance (24 CFR part 983) under Section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)); or

* * * * *

■ 39. Amend § 903.6 by adding paragraph (c) to read as follows:

### § 903.6 What information must a PHA provide in the 5-Year Plan?

* * * * *

(c) If a PHA intends to select one or more projects for project-based assistance without competition in accordance with § 983.51(c), the PHA must include a statement of this intent in its 5-Year Plan (or an amendment to the 5-Year Plan) in order to notify the public prior to making a noncompetitive selection.

■ 40. Amend § 903.7 by:

■ a. In the introductory text, removing the phrase ''both public housing and tenant-based assistance'' and adding, in its place, the phrase ''public housing, tenant-based assistance, and project-based assistance'';

■ b. Revising paragraph (a)(1) introductory text, and paragraphs (b)(3), (c), (d), and (e)(4);

■ c. In paragraph (f), adding ''and project-based assistance'' after the phrase ''tenant-based assistance'';

■ d. Revising paragraphs (l)(1)(iii) and (2); and

■ e. Redesignating paragraph (r) as paragraph (s) and adding new paragraph (r).

The revisions and addition read as follows:

### § 903.7 What information must a PHA provide in the Annual Plan?

* * * * *

(a) * * *

(1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based and project-based assistance waiting lists, including:

* * * * *

(b) * * *

(3) *Other admissions policies.* The PHA's admission policies that include any other PHA policies that govern eligibility, selection and admissions for the public housing (see part 960 of this title) and tenant-based assistance programs (see part 982, subpart E of this title) and project-based assistance programs (see part 982, subpart E of this title except as provided in § 983.3, and subpart F of 983). (The information requested on site-based waiting lists and deconcentration is applicable only to public housing.)

(c) *A statement of financial resources.* This statement must address the financial resources that are available to the PHA for the support of Federal public housing, tenant-based assistance, and project-based assistance programs administered by the PHA during the plan year. The statement must include a listing, by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing, tenant-based assistance, and project-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned uses for the resources.

(d) *A statement of the PHA's rent determination policies.* This statement must describe the PHA's basic discretionary policies that govern rents charged for public housing units, applicable flat rents, and the rental contributions of families receiving tenant-based assistance and project-based assistance. For tenant-based assistance and project-based assistance, this statement also shall cover any discretionary minimum tenant rents and payment standard policies.

(e) * * *

(4) The information requested on a PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information requested on PHA program management and listing of administered programs applies to public housing, tenant-based assistance, and project-based assistance.

* * * * *

(l) * * *

(1) * * *

(iii) How the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act (42 U.S.C. 1437j(c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing, tenant-based assistance, and project-based assistance recipients resulting from welfare program requirements. PHAs must address any cooperation agreements, as described in section 12(d)(7) of the 1937 Act (42 U.S.C. 1437j(d)(7)), that the PHA has entered into or plans to enter into.

(2) The information required by paragraph (l) of this section is applicable to public housing, tenant-based assistance, and project-based assistance, except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

* * * * *

(r) *A statement of participation in the project-based assistance program.* If a PHA participates in the project-based assistance program, the PHA's Annual Plan must include a statement of the projected number of project-based units, the general location of the project-based units, and how project-basing would be consistent with its Annual Plan.

* * * * *

### § 903.11 [AMENDED]

■ 41. Amend § 903.11 by:

■ a. In paragraph (a)(3), adding ''and/or project-based assistance'' after ''tenant-based assistance'';

■ b. In paragraph (c)(1), removing the reference ''§ 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r)'' and adding, in its place, the reference ''903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p), (r), and (s)'';

■ c. In paragraph (c)(3), adding ''and/or project-based assistance'' after ''tenant-based assistance'', and removing the reference ''903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r)'' and adding, in its place, the reference ''903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p), (r), and (s)''.

■ 42. Amend § 903.12 by:

■ a. Revising paragraphs (b) and (c)(1);

■ b. Removing paragraph (c)(2) and redesignating paragraph (c)(3) as paragraph (c)(2); and
■ c. In redesignated paragraph (c)(2), removing the reference to ''and (r)'' and adding. in its place, a reference to ''and (s)''.

The revisions read as follows:

**§ 903.12 What are the streamlined Annual Plan requirements for small PHAs?**

* * * * *

(b) *Streamlined Annual Plan requirements for fiscal years in which its 5-Year Plan is also due.* For the fiscal year in which its 5-Year Plan is also due, the streamlined Annual Plan of the small PHA shall consist of the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (o) (r), and (s). The information required by § 903.7(a) must be included only to the extent it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance and project-based assistance waiting lists. The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under Section 8(y) of the 1937 Act. The information required in *§ 903.7(r)* must be included only to the extent that the PHA participates in the project-based assistance program.

(c) * * *

(1) The information required by § 903.7(g) and (o) and, if applicable, § 903.7(b)(2) with respect to site-based waiting lists, § 903.7(k)(1)(i) with respect to homeownership programs under Section 8(y) of the 1937 Act, and § 903.7(r) with respect to participation in the project-based assistance program;

* * * * *

**§ 903.13 [AMENDED]**

■ 43. Amend § 903.13(b)(1) and (3) by adding ''and/or project-based assistance'' after ''tenant-based assistance'' every time it appears.

■ 44. Amend § 903.15 by revising paragraph (c) introductory text to read as follows:

**§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan and a PHA's Fair Housing Requirements?**

* * * * *

(c) *Fair housing requirements.* A PHA is obligated to affirmatively further fair housing in its operating policies, procedures, and capital activities. All admission and occupancy policies for public housing and Section 8 tenant-based and project-based housing programs must comply with Fair Housing Act requirements and other civil rights laws and regulations and with a PHA's plans to affirmatively further fair housing. The PHA may not impose any specific income or racial quotas for any development or developments.

* * * * *

## PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

■ 45. The authority citation for part 908 continues to read as follows:

**Authority:** 42 U.S.C. 1437f, 3535(d), 3543, 3544, and 3608a.

■ 46. Revise the part heading to read as set forth above.

**§ 908.101 [AMENDED]**

■ 47. Amend § 908.101 by removing the phrase ''Rental Certificate,''.

## PART 943—PUBLIC HOUSING AGENCY CONSORTIA AND JOINT VENTURES

■ 48. The authority for part 943 continues to read as follows:

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

**§ 943.120 [AMENDED]**

■ 49. Amend § 943.120(a)(2) by:
■ a. Removing the words ''and certificate'' and ''certificate and''; and
■ b. Removing the word ''programs'' and adding, in its place, the word ''program''.

## PART 945—DESIGNATED HOUSING—PUBLIC HOUSING DESIGNATED FOR OCCUPANCY BY DISABLED, ELDERLY, OR DISABLED AND ELDERLY FAMILIES

■ 50. The authority for part 945 continues to read as follows:

**Authority:** 42 U.S.C. 1473e and 3535(d).

**§ 945.103 [AMENDED]**

■ 51. Amend § 945.103(b)(2) by removing the words ''certificates and''.

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

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

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

■ 53. Amend § 960.202 by redesignating (c) as paragraph (d) and adding new paragraph (c) to read as follows:

**§ 960.202 Tenant selection policies.**

* * * * *

(c) *Priority for tenant-based and project-based voucher families displaced due to HQS non-compliance.* The PHA must adopt a preference for tenant-based and project-based families displaced due to HQS noncompliance in accordance with § 982.404(e)(2) and § 983.208(d)(6)(ii).

* * * * *

## PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

■ 54. The authority citation for part 972 continues to read as follows:

**Authority:** 42 U.S.C. 1437t, 1437z–5, and 3535(d).

**§ 972.218 [AMENDED]**

■ 55. Amend § 972.218(c)(2)(i) by removing the words ''certificates or''.

## PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

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

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

## PART 982 [AMENDED]

■ 57. Amend part 982 by revising all references to ''administrative plan'' and ''Administrative plan'' to read ''Administrative Plan.''

■ 58. Amend § 982.4 by:
■ a. Revising paragraph (a); and
■ b. In paragraph (b):
■ c. Adding in alphabetical order definitions for ''Abatement'', ''Authorized voucher units'', and ''Building'';
■ d. Revising the definition of ''Fair market rent (FMR)'';
■ e. Adding in alphabetical order definitions for ''Foster adult'', ''Foster child'';
■ f. Revising the definition of ''Housing quality standards (HQS)'';
■ g. Adding in alphabetical order definitions for ''Independent entity'', ''PHA-owned unit'', ''Request for Tenancy Approval (RFTA)'', ''Section 8 Management Assessment Program (SEMAP)'', ''Small Area Fair Market Rents (SAFMRs)'', ''Tenant-paid utilities'', and ''Withholding''.

The revisions and additions read as follows:

**§ 982.4 Definitions.**

(a) *Definitions found elsewhere.* (1) The following terms are defined in 24 CFR part 5, subpart A: 1937 Act, Covered person, Drug, Drug-related

criminal activity, federally assisted housing, Guest, Household, HUD, MSA, Other person under the tenant's control, Public housing, Section 8, and Violent criminal activity.

(2) The following terms are defined in 24 CFR part 5, subpart D: Disabled family, Elderly family, Near-elderly family, and Person with disabilities.

(3) The following terms are defined in 24 CFR part 5, subpart F: Adjusted income, Annual income, Extremely low income family, Total tenant payment, Utility allowance, and Welfare assistance.

(b) * * *

*Abatement.* Stopping HAP payments to an owner with no potential for retroactive payment.

* * * * *

*Authorized voucher units.* The number of units for which a PHA is authorized to make assistance payments to owners under its annual contributions contract.

* * * * *

*Building.* A structure with a roof and walls that contains one or more dwelling units.

* * * * *

*Fair market rent (FMR).* The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. In the HCV program, the FMR may be established at the ZIP code level (see definition of Small Area Fair Market Rents), metropolitan area level, or non-metropolitan county level.

* * * * *

*Foster adult.* A member of the household who is 18 years of age or older and meets the definition of a foster adult under State law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

*Foster child.* A member of the household who meets the definition of a foster child under State law. In general, a foster child is placed with the family by an authorized placement agency (*e.g.,* public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

* * * * *

*Housing quality standards (HQS).* The minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the HCV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

*Independent entity.* (i) The unit of general local government; however, if the PHA itself is the unit of general local government or an agency of such government, then only the next level of general local government (or an agency of such government) or higher may serve as the independent entity; or

(ii) A HUD-approved entity that is autonomous and recognized under State law as a separate legal entity from the PHA. The entity must not be connected financially (except regarding compensation for services performed for PHA-owned units) or in any other manner that could result in the PHA improperly influencing the entity.

* * * * *

*PHA-owned unit.* (i) A dwelling unit in a project that is:

(A) Owned by the PHA (including having a controlling interest in the entity that owns the project);

(B) Owned by an entity wholly controlled by the PHA; or

(C) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

(ii) A controlling interest is:

(A) Holding more than 50 percent of the stock of any corporation;

(B) Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a nonprofit corporation);

(C) Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;

(D) Holding more than 50 percent of all managing member interests in an LLC;

(E) Holding more than 50 percent of all general partner interests in a partnership; or

(F) Equivalent levels of control in other ownership structures.

* * * * *

*Request for Tenancy Approval (RFTA).* A form (form HUD–52517) submitted by or on behalf of a family to a PHA once the family has identified a unit that it wishes to rent using tenant-based voucher assistance.

* * * * *

*Section 8 Management Assessment Program (SEMAP).* A system used by HUD to measure PHA performance in key Section 8 program areas. See 24 CFR part 985.

* * * * *

*Small Area Fair Market Rents (SAFMRs or Small Area FMRs).* Small Area FMRs are FMRs established for U.S. Postal Service ZIP code areas and are calculated in accordance with 24 CFR 888.113(a) and (b).

* * * * *

*Tenant-paid utilities.* Utilities and services that are not included in the rent to owner and are the responsibility of the assisted family, regardless of whether the payment goes to the utility company or the owner. The utilities and services are those necessary in the locality to provide housing that complies with HQS. The utilities and services may also include those required by HUD through a **Federal Register** notice after providing opportunity for public comment.

* * * * *

*Withholding.* Stopping HAP payments to an owner while holding them for potential retroactive disbursement.

■ 59. Amend § 982.54 by:

■ a. In paragraph (b), removing the term ''PHA plan'' and adding, in its place, the term ''PHA Plan'';

■ b. Revising paragraph (d) introductory text and paragraph (d)(4)(iii);

■ c. Adding new paragraph (d)(4)(iv);

■ d. Revising paragraphs (d)(14), (18), (21), (22), and (23); and

■ e. Adding paragraphs (d)(24) through (26).

The revisions and additions read as follows:

**§ 982.54 Administrative Plan.**

* * * * *

(d) The PHA Administrative Plan must cover all the PHA's local policies for administration of the program, including the PHA's policies on the following subjects (see 24 CFR 983.10 for a list of subjects specific to the project-based voucher (PBV) program that also must be included in the Administrative Plan of a PHA that operates a PBV program):

(4) * * *

(iii) Standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with § 982.553, or other factors in accordance with §§ 982.552, 982.554, and 982.555; and

(iv) Policies concerning residency by a foster child, foster adult, or live-in aide, including defining when PHA consent for occupancy by a foster child, foster adult, or live-in aide must be given or may be denied;

* * * * *

(14) Payment standard policies, including:

(i) The process for establishing and revising payment standards, including whether the PHA has voluntarily adopted the use of Small Area Fair Market Rents (SAFMRs);

(ii) A description of how the PHA will administer decreases in the payment standard amount for a family continuing to reside in a unit for which the family is receiving assistance (see § 982.505(c)(3)); and

(iii) If the PHA establishes different payment standard amounts for designated areas within its jurisdiction, including exception areas, the criteria used to determine the designated areas and the payment standard amounts for those designated areas. (See § 982.503(a)(2)). All such areas must be described in the PHA's Administrative Plan or payment standard schedule;

* * * * *

(18) Policies concerning interim redeterminations of family income and composition, the frequency of determinations of family income, and income-determination practices, including whether the PHA will accept a family declaration of assets;

* * * * *

(21) Procedural guidelines and performance standards for conducting required HQS inspections, including:

(i) Any deficiency that the PHA has adopted as a life-threatening deficiency that is not a HUD-required life-threatening deficiency.

(ii) For PHAs that adopt the initial inspection non-life-threatening deficiency option:

(A) The PHA's policy on whether the provision will apply to all initial inspections or a portion of initial inspections.

(B) The PHA's policy on whether the provision will be applied to only some inspections and how the units will be selected.

(C) The PHA's policy on using withheld HAP funds to repay an owner once the unit is in compliance with HQS.

(iii) For PHAs that adopt the alternative inspection provision:

(A) The PHA's policy on how it will apply the provision to initial and periodic inspections.

(B) The specific alternative inspection method used by the PHA.

(C) The specific properties or types of properties where the alternative inspection method will be employed.

(D) For initial inspections, the maximum amount of time the PHA will withhold HAP if the owner does not correct the HQS deficiencies within the cure period, and the period of time after which the PHA will terminate the HAP contract for the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract.

(iv) The PHA's policy on charging a reinspection fee to owners.

(22) The PHA's policy on withholding HAP for units that do not meet HQS (see § 982.404(d)(1));

(23) The PHA's policy on assisting families with relocating and finding a new unit (see § 982.404(e)(3));

(24) The PHA's policy on screening of applicants for family behavior or suitability for tenancy;

(25) Whether the PHA will permit a family to submit more than one Request for Tenancy Approval at a time (see § 982.302(b)); and

(26) In the event of insufficient funding, taking into account any cost-savings measures taken by the PHA, a description of the factors the PHA will consider when determining which HAP contracts to terminate first (*e.g.,* prioritization of PBV HAP contracts over tenant-based HAP contracts or prioritization of contracts that serve vulnerable families or individuals).

■ 60. Amend § 982.301 by:

■ a. Revising and republishing paragraph (a)

■ b. Revising paragraphs (b)(8), (10), (12), (14) and (15);

■ c. Adding paragraph (c).

The revisions, addition, and republication read as follows:

**§ 982.301 Information when family is selected.**

(a) *Oral briefing.* When the PHA selects a family to participate in a tenant-based program, the PHA must give the family an oral briefing.

(1) The briefing must include information on the following subjects:

(i) A description of how the program works;

(ii) Family and owner responsibilities;

(iii) Where the family may lease a unit, including renting a dwelling unit inside or outside the PHA jurisdiction, and any information on selecting a unit that HUD provides;

(iv) An explanation of how portability works; and

(v) An explanation of the advantages of areas that do not have a high concentration of low-income families.

(2) The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction, or outside the PHA jurisdiction under portability procedures, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order. The family must be informed of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance.

(3) The PHA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E, and must provide information on the reasonable accommodation process.

(b) * * *

(8) PHA subsidy standards, including when the PHA will consider granting exceptions to the standards as allowed by 24 CFR 982.402(b)(8), and when exceptions are required as a reasonable accommodation for persons with disabilities under Section 504, the Fair Housing Act, or the Americans with Disabilities Act;

* * * * *

(10) Information on Federal, State, and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request a reasonable accommodation or modification (including information on requesting exception payment standards as a reasonable accommodation) under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;

* * * * *

(12) Notice that if the family includes a person with disabilities, the PHA is subject to the requirement under 24 CFR 8.28(a)(3) to provide a current listing of accessible units known to the PHA and, if necessary, other assistance in locating an available accessible dwelling unit;

* * * * *

(14) The advantages of areas that do not have a high concentration of low-income families which may include, access to accessible and high-quality housing, transit, employment opportunities, educational opportunities, recreational facilities, public safety stations, retail services, and health services; and

(15) A description of when the PHA is required to give a participant family the opportunity for an informal hearing and how to request a hearing.

(c) *Providing information for persons with limited English proficiency (LEP).* The PHA must take reasonable steps to ensure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and HUD's implementing regulations at 24 CFR part 1.

■ 61. Amend § 982.305 by:

■ a. Revising paragraph (a) introductory text and paragraph (b)(1) introductory text;

■ b. Adding paragraph (b)(2) introductory text;
■ c. Revising paragraph (b)(2)(ii);
■ d. Redesignating paragraph (b)(3) as paragraph (b)(4), and adding new paragraph (b)(3);
■ e. Revising paragraph (c)(4); and
■ f. Adding paragraph (f).

The revision and additions read as follows:

**§ 982.305 PHA approval of assisted tenancy.**

(a) *Program requirements.* The PHA may not give approval for the family of the assisted tenancy, or execute a HAP contract, until the PHA has determined that:

* * * * *

(b) * * *

(1) The following must be completed before the beginning of the initial term of the lease for a unit:

* * * * *

(2) The timeframes for inspection:

* * * * *

(ii) The 15-day clock (under paragraph (b)(2)(i) of this section) is suspended during any period when the unit is not available for inspection.

(3) If the PHA has implemented, and the unit is covered by, the alternative inspection option for initial inspections under § 982.406(e), the PHA is not subject to paragraphs (a)(2), (b)(1)(i), and (b)(2) of this section.

* * * * *

(c) * * *

(4) Any HAP contract executed after the 60-day period is void, and the PHA may not pay any housing assistance payment to the owner, unless there are extenuating circumstances that prevent or prevented the PHA from meeting the 60-day deadline, then the PHA may submit to the HUD field office a request for an extension. The request, which must be submitted no later than two weeks after the 60-day deadline, must include an explanation of the extenuating circumstances and any supporting documentation. HUD at its sole discretion will determine if the extension request is approved.

* * * * *

(f) *Initial HQS inspection requirements.* (1) Unless the PHA has implemented, and determined that the unit is covered by, either of the two initial HQS inspection options in paragraphs (f)(2) and (3) of this section, the unit must be inspected by the PHA and pass HQS before:

(i) The PHA may approve the assisted tenancy and execute the HAP contract, and

(ii) The beginning of the initial lease term.

(2) If the PHA has implemented, and determines that the unit is covered by, the non-life-threatening deficiencies option at § 982.405(j), the unit must be inspected by the PHA and must have no life-threatening deficiencies before:

(i) The PHA may approve the assisted tenancy and execute the HAP contract; and

(ii) The beginning of the initial lease term.

(3) If the PHA has implemented and determines that the unit is covered by the alternative inspection option at § 982.406(e), then the PHA must determine that the unit was inspected in the previous 24 months by an inspection that meets the requirements of § 982.406 before:

(i) The PHA may approve the assisted tenancy and execute the HAP contract; and

(ii) The beginning of the initial lease term.

(4) If the PHA has implemented and determines that the unit is covered by both the no life-threatening deficiencies option and the alternative inspection option, the unit is subject only to paragraph (f)(3) of this section, not paragraph (f)(2) of this section.

■ 62. Amend § 982.352 by:
■ a. Adding ''or'' at the end of paragraph (a)(5); and
■ b. Revising paragraph (b).

The revision reads as follows:

**§ 982.352 Eligible housing.**

* * * * *

(b) *PHA-owned housing.* (1) PHA-owned units, as defined in § 982.4, may be assisted under the tenant-based program only if all the following conditions are satisfied:

(i) The PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease.

(ii) A PHA-owned unit is freely selected by the family, without PHA pressure or steering.

(iii) The unit selected by the family is not ineligible housing.

(iv) During assisted occupancy, the family may not benefit from any form of housing subsidy that is prohibited under paragraph (c) of this section.

(v)(A) The PHA must obtain the services of an independent entity, as defined in § 982.4, to perform the following PHA functions as required under the program rule:

(*1*) To determine rent reasonableness in accordance with § 982.507. The independent entity shall communicate the rent reasonableness determination to the family and the PHA.

(*2*) To assist the family in negotiating the rent to owner in accordance with § 982.506.

(*3*) To inspect the unit for compliance with HQS in accordance with §§ 982.305(a) and 982.405. The independent entity shall communicate the results of each such inspection to the family and the PHA.

(B) The PHA may compensate the independent entity from PHA administrative fees (including fees credited to the administrative fee reserve) for the services performed by the independent entity. The PHA may not use other program receipts to compensate the independent entity for such services. The PHA and the independent entity may not charge the family any fee or charge for the services provided by the independent entity.

(2) [Reserved]

* * * * *

■ 63. Revise § 982.401 to read as follows:

**§ 982.401 Housing quality standards.**

As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

**§ 982.402 [Amended]**

■ 64. Amend § 982.402(b)(2) by removing the words ''housing quality standards (HQS)'' and adding, in their place, the term ''HQS''.

■ 65. Revise and republish § 982.404 to read as follows:

**§ 982.404 Maintenance: Owner and family responsibility; PHA remedies.**

(a) *Owner obligation.* (1) The owner must maintain the unit in accordance with HQS. A unit is not in compliance with HQS if the PHA or other inspector authorized by the State or local government determines that the unit has HQS deficiencies based upon an inspection, the agency or inspector notifies the owner in writing of the HQS deficiencies, and the deficiencies are not remedied within the appropriate timeframe.

(2) If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take enforcement action in accordance with this section.

(3) If a deficiency is life-threatening, the owner must correct the deficiency within 24 hours of notification. For other deficiencies, the owner must correct the deficiency within 30 calendar days of notification (or any reasonable PHA-approved extension).

(4) In the case of an HQS deficiency that the PHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than

any damage resulting from ordinary use, the PHA may waive the owner's responsibility to remedy the violation. The HAP to the owner may not be withheld or abated if the owner responsibility has been waived. However, the PHA may terminate assistance to a family because of an HQS breach beyond damage resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control.

(b) *Family obligation.* (1) The family may be held 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 the PHA has waived the owner's responsibility to remedy the violation in accordance with paragraph (a)(4) of this section, the following applies:

(i) If the HQS breach caused by the family is life-threatening, the family must take all steps permissible under the lease and State and local law to ensure the deficiency is corrected within 24 hours of notification.

(ii) For other family-caused deficiencies, the family must take all steps permissible under the lease and State and local law to ensure that the deficiency is corrected within 30 calendar days of notification (or any PHA-approved extension).

(3) If the family has caused a breach of the HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with § 982.552.

(c) *Determination of noncompliance with HQS.* The unit is in noncompliance with HQS if:

(1) The PHA or authorized inspector determines the unit has HQS deficiencies based upon an inspection;

(2) The PHA notified the owner in writing of the unit HQS deficiencies; and

(3) The unit HQS deficiencies are not corrected in accordance with the timeframes established in paragraph (a)(3) of this section.

(d) *PHA remedies for HQS deficiencies identified during inspections other than the initial inspection.* This subsection covers PHA actions when HQS deficiencies are identified as a result of an inspection other than the initial inspection (see § 982.405). For PHA HQS enforcement actions for HQS deficiencies under the initial HQS inspection NLT or alternative inspection options, see §§ 982.405(j) and 982.406(e), respectively.

(1) A PHA may withhold assistance payments for units that have HQS deficiencies once the PHA has notified the owner in writing of the deficiencies. The PHA must identify in its Administrative Plan the conditions under which it will withhold HAP. If the unit is brought into compliance during the applicable cure period (within 24 hours of notification for life-threatening deficiencies and within 30 days of notification (or other reasonable period established by the PHA) for non-life-threatening deficiencies), the PHA:

(i) Must resume assistance payments; and

(ii) Must provide assistance payments to cover the time period for which the assistance payments were withheld.

(2)(i) The PHA must abate the HAP, including amounts that had been withheld, if the owner fails to make the repairs within the applicable cure period (within 24 hours of notification for life-threatening deficiencies and within 30 days of notification (or other reasonable period established by the PHA) for non-life-threatening deficiencies).

(ii) If a PHA abates the assistance payments under this paragraph, the PHA must notify the family and the owner that it is abating payments and that if the unit does not meet HQS within 60 days (or a reasonable longer period established by the PHA) after the determination of noncompliance in accordance with paragraph (c) of this section, the PHA will terminate the HAP contract for the unit, and the family will have to move if the family wishes to receive continued assistance. The PHA must issue the family its voucher to move at least 30 days prior to the termination of the HAP contract.

(3) An owner may not terminate the tenancy of any family due to the withholding or abatement of assistance under paragraph (a) of this section. During the period that assistance is abated, the family may terminate the tenancy by notifying the owner and the PHA. If the family chooses to terminate the tenancy, the HAP contract will automatically terminate on the effective date of the tenancy termination or the date the family vacates the unit, whichever is earlier. The PHA must promptly issue the family its voucher to move.

(4) If the family did not terminate the tenancy and the owner makes the repairs and the unit complies with HQS within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must recommence payments to the owner. The PHA does not make any payments to the owner for the period of time that the payments were abated.

(5) If the owner fails to make the repairs within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must terminate the HAP contract.

(e) *Relocation due to HQS deficiencies.* (1) The PHA must give any family residing in a unit for which the HAP contract is terminated under paragraph (d)(5) of this section due to a failure to correct HQS deficiencies at least 90 days or a longer period as the PHA determines is reasonably necessary following the termination of the HAP contract to lease a new unit.

(2) If the family is unable to lease a new unit within the period provided by the PHA under paragraph (e)(1) of this section and the PHA owns or operates public housing, the PHA must offer, and, if accepted, provide the family a selection preference for an appropriate-size public housing unit that first becomes available for occupancy after the time period expires.

(3) PHAs may assist families relocating under this paragraph (e) in finding a new unit, including using up to 2 months of the withheld and abated assistance payments for costs directly associated with relocating to a new unit, including security deposits, temporary housing costs, or other reasonable moving costs as determined by the PHA based on their locality. If the PHA uses the withheld and abated assistance payments to assist with the family's relocation costs, the PHA must provide security deposit assistance to the family as necessary. PHAs must assist families with disabilities in locating available accessible units in accordance with 24 CFR 8.28(a)(3). If the family receives security deposit assistance from the PHA for the new unit, the PHA may require the family to remit the security deposit returned by the owner of the new unit at such time that the lease is terminated, up to the amount of the security deposit assistance provided by the PHA for that unit. The PHA must include in its Administrative Plan the policies it will implement for this provision.

(f) *Applicability.* This section is applicable to HAP contracts that were either executed on or after or renewed after June 6, 2024. For purposes of this paragraph, a HAP contract is renewed if

the HAP contract continues beyond the initial term of the lease. For all other HAP contracts, § 982.404 as in effect on June 6, 2024 remains applicable.

■ 66. Revise § 982.405 to read as follows:

**§ 982.405 PHA unit inspection.**

(a) *Initial Inspections.* The PHA must inspect the unit leased to a family prior to the initial term of the lease to determine if the unit meets the HQS. (*See* § 982.305(b)(2) concerning timing of initial inspection by the PHA.)

(b) *Periodic Inspections.* The PHA must inspect the unit at least biennially during assisted occupancy to ensure that the unit continues to meet the HQS, except that a small rural PHA, as defined in § 902.101 of this title, must inspect a unit once every three years during assisted occupancy to ensure that the unit continues to meet the HQS.

(c) *Supervisory Quality Control Inspections.* The PHA must conduct supervisory quality control HQS inspections.

(d) *Interim Inspections.* When a participant family or government official notifies the PHA of a potential deficiency, the following conditions apply:

(1) *Life-Threatening.* If the reported deficiency is life-threatening, the PHA must, within 24 hours of notification, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of PHA notification.

(2) *Non-Life-Threatening.* If the reported deficiency is non-life-threatening, the PHA must, within 15 days of notification, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of notification from the PHA or within any PHA-approved extension.

(3) *Extraordinary circumstances.* In the event of extraordinary circumstances, such as if a unit is within a presidentially declared disaster area, HUD may approve an exception of the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

(e) *Scheduling inspections.* In scheduling inspections, the PHA must consider complaints and any other information brought to the attention of the PHA.

(f) *PHA notification of owner.* The PHA must notify the owner of deficiencies shown by the inspection.

(g) *Charge to family for inspection.* The PHA may not charge the family for an initial inspection or reinspection of the unit.

(h) *Charge to owner for inspection.* The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. The PHA may establish a reasonable fee to owners for a reinspection if an owner notifies the PHA that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing, pursuant to § 982.404(a), was not corrected. The owner may not pass this fee along to the family. Fees collected under this paragraph (h) will be included in a PHA's administrative fee reserve and may be used only for activities related to the provision of the HCV program.

(i) *Verification methods.* When a PHA must verify correction of a deficiency, the PHA may use verification methods other than another on-site inspection. The PHA may establish different verification methods for initial and non-initial inspections or for different HQS deficiencies. Upon either an inspection for initial occupancy or a reinspection, the PHA may accept photographic evidence or other reliable evidence from the owner to verify that a deficiency has been corrected.

(j) *Initial HQS inspection option: No life-threatening deficiencies.* (1) A PHA may elect to approve an assisted tenancy, execute the HAP contract, and begin making assistance payments for a unit that failed the initial HQS inspection, provided that the unit has no life-threatening deficiencies. A PHA that implements this option (NLT option) may apply the option to all the PHA's initial inspections or may limit the use of the option to certain units. The PHA's Administrative Plan must specify the circumstances under which the PHA will exercise the NLT option. If the PHA has established, and the unit is covered by, both the NLT option and the alternative inspections option for the initial HQS inspection, see § 982.406(f).

(2) The PHA must notify the owner and the family if the NLT option is available for the unit selected by the family. After completing the inspection and determining there are no life-threatening deficiencies, the PHA provides both the owner and the family with a list of all the non-life-threatening deficiencies identified by the initial HQS inspection and, should the owner not complete the repairs within 30 days, the maximum amount of time the PHA will withhold HAP before abating assistance. The PHA must also inform the family that if the family accepts the unit and the owner fails to make the repairs within the cure period, which may not exceed 180 days from the effective date of the HAP contract, the PHA will terminate the HAP contract, and the family will have to move to another unit in order to receive voucher assistance. The family may choose to decline the unit based on the deficiencies and continue its housing search.

(3) If the family decides to lease the unit, the PHA and the owner execute the HAP contract, and the family enters into the assisted lease with the owner. The PHA commences making assistance payments to the owner.

(4) The owner must correct the deficiencies within 30 days from the effective date of the HAP contract. If the owner fails to correct the deficiencies within the 30-day cure period, the PHA must withhold the housing assistance payments until the owner makes the repairs and the PHA verifies the correction. Once the deficiencies are corrected, the PHA may use the withheld housing assistance payments to make payments for the period that payments were withheld.

(5) A PHA relying on the non-life-threatening inspection provision must identify in the PHA Administrative Plan all the optional policies identified in § 982.54(d)(21)(i) and (ii).

(6) The PHA establishes in the Administrative Plan:

(i) The maximum amount of time it will withhold payments if the owner fails to correct the deficiencies within the required cure period before abating payments; and

(ii) The date by which the PHA will terminate the HAP contract for the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract.

■ 67. Revise and republish § 982.406 to read as follows:

**§ 982.406 Use of alternative inspections.**

(a) *In general.* A PHA may comply with the inspection requirements in § 982.405(a) and (b) by relying on an alternative inspection (*i.e.,* an inspection conducted for another housing program) only if the PHA is able to obtain the results of the alternative inspection. The PHA may implement the use of alternative inspections for both initial and periodic inspections or may limit the use of alternative inspections to either initial or periodic inspections. The PHA may limit the use of alternative inspections to certain units, as provided in the PHA's Administrative Plan.

(b) *Administrative Plan.* A PHA relying on an alternative inspection must identify in the PHA Administrative Plan all the optional policies identified in § 982.54(d)(21)(iii).

(c) *Eligible inspection methods.* (1) A PHA may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs), or inspections performed by HUD.

(2) If a PHA wishes to rely on an inspection method other than a method listed in paragraph (c)(1) of this section, then, prior to amending its administrative plan, the PHA must submit to the Real Estate Assessment Center (REAC) a copy of the inspection method it wishes to use, along with its analysis of the inspection method that shows that the method ''provides the same or greater protection to occupants of dwelling units'' as would HQS.

(i) A PHA may rely upon such alternative inspection method only upon receiving approval from REAC to do so.

(ii) A PHA that uses an alternative inspection method approved under this paragraph must monitor changes to the standards and requirements applicable to such method. If any change is made to the alternative inspection method, then the PHA must submit to REAC a copy of the revised standards and requirements, along with a revised comparison to HQS. If the PHA or REAC determines that the revision would cause the alternative inspection to no longer meet or exceed HQS, then the PHA may no longer rely upon the alternative inspection method to comply with the inspection requirement at § 982.405(a) and (b).

(d) *Use of alternative inspection.* (1) If an alternative inspection method employs sampling, then a PHA may rely on such alternative inspection method for purposes of an initial or periodic inspection only if units occupied by voucher program participants are included in the population of units forming the basis of the sample.

(2) In order for a PHA to rely upon the results of an alternative inspection for purposes of an initial or periodic inspection, a property inspected pursuant to such method must meet the standards or requirements regarding housing quality or safety applicable to properties assisted under the program using the alternative inspection method. To make the determination of whether such standards or requirements are met, the PHA must adhere to the following procedures:

(i) If a property is inspected under an alternative inspection method, and the property receives a ''pass'' score, then the PHA may rely on that inspection.

(ii) If a property is inspected under an alternative inspection method, and the property receives a ''fail'' score, then the PHA may not rely on that inspection.

(iii) If a property is inspected under an alternative inspection method that does not employ a pass/fail determination—for example, in the case of a program where deficiencies are simply identified—then the PHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a ''fail'' score under HQS. If no such deficiency exists, then the PHA may rely on the inspection. If such a deficiency does exist, then the PHA may not rely on the inspection.

(3) Under any circumstance described in paragraph (d)(2) of this section in which a PHA is prohibited from relying on an alternative inspection method for a property, the PHA must, within a reasonable period of time, conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any identified deficiencies.

(e) *Initial inspections using the alternative inspection option.* (1) The PHA may approve the tenancy, allow the family to enter into the lease agreement, and execute the HAP contract for a unit that has been inspected in the previous 24 months where the alternative inspection meets the requirements of this section. If the PHA has established and the unit is covered by both the NLT option under § 982.405(j) and the alternative inspections option for the initial HQS inspection, see paragraph (f) of this section.

(2) The PHA notifies the owner and the family that the unit selected by the family is eligible for the alternative inspection option. The PHA must provide the family with the PHA list of HQS deficiencies that are considered life-threatening as part of this notification. If the owner and family agree to the use of this option, the PHA approves the assisted tenancy, allows the family to enter into the lease agreement with the owner, and executes the HAP contract on the basis of the alternative inspection.

(3) The PHA must conduct an HQS inspection within 30 days of receiving the Request for Tenancy Approval. If the family reports a deficiency to the PHA prior to the PHA's HQS inspection, the PHA must inspect the unit within the time period required under § 982.405(d) or within 30 days of the effective date of the HAP contract, whichever time period ends first.

(4) The PHA must enter into the HAP contract with the owner before conducting the HQS inspection. The PHA may not make housing assistance payments to the owner until the PHA has inspected the unit.

(5) The PHA may commence housing assistance payments to the owner and make housing assistance payments retroactive to the effective date of the HAP contract only after the unit passes the PHA's HQS inspection. If the unit does not pass the HQS inspection, the PHA may not make housing assistance payments to the owner until all the deficiencies have been corrected. If a deficiency is life-threatening, the owner must correct the deficiency within 24 hours of notification from the PHA. For other deficiencies, the owner must correct the deficiency within no more than 30 calendar days (or any PHA-approved extension) of notification from the PHA. If the owner corrects the deficiencies within the required cure period, the PHA makes the housing assistance payments retroactive to the effective date of the HAP contract.

(6) The PHA establishes in the Administrative Plan:

(i) The maximum amount of time it will withhold payments if the owner does not correct the deficiencies within the required cure period before abating payments; and

(ii) The date by which the PHA will terminate the HAP contract for the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract.

(f) *Initial inspection: using the alternative inspection option in combination with the non-life-threatening deficiencies option.* (1) The PHA notifies the owner and the family that both the alternative inspection option and the NLT option are available for the unit selected by the family. The PHA must provide the family the list of HQS deficiencies that are considered life-threatening as part of this notification. If the owner and family agree to the use of both options, the PHA approves the assisted tenancy, allows the family to enter into the lease agreement with the owner, and executes the HAP contract on the basis of the alternative inspection.

(2) The PHA must conduct an HQS inspection within 30 days after the family and owner submit a complete Request for Tenancy Approval. If the family reports a deficiency to the PHA prior to the PHA's HQS inspection, the PHA must inspect the unit within the time period required under § 982.405(d) or within 30 days of the effective date

of the HAP contract, whichever time period ends first.

(3) The PHA must enter into the HAP contract with the owner before conducting the HQS inspection. The PHA may not make housing assistance payments to the owner until the PHA has inspected the unit. If the unit passes the HQS inspection, the PHA commences making housing assistance payments to the owner and makes payments retroactive to the effective date of the HAP contract.

(4) If the unit fails the PHA's HQS inspection but has no life-threatening deficiencies, the PHA commences making housing assistance payments, which are made retroactive to the effective date of the HAP contract. The owner must correct the deficiencies within 30 days from the effective date of the HAP contract. If the owner fails to correct the deficiencies within the 30-day cure period, the PHA must withhold the housing assistance payments until the owner makes the repairs and the PHA verifies the correction. Once the unit is in compliance with HQS, the PHA may use the withheld housing assistance payments to make payments for the period that payments were withheld.

(5) If the unit does not pass the HQS inspection and has life-threatening deficiencies, the PHA may not commence making housing assistance payments to the owner until all the deficiencies have been corrected. The owner must correct all life-threatening deficiencies within 24 hours of notification from the PHA. For other deficiencies, the owner must correct the deficiency within 30 days (or any PHA-approved extension) of notification from the PHA. If the owner corrects the deficiencies within the required cure period, the PHA makes the housing assistance payments retroactive to the effective date of the HAP contract.

(6) The PHA establishes in the Administrative Plan:

(i) The maximum amount of time it will withhold payments if the owner fails to correct the deficiencies within the required cure period before abating payments; and

(ii) The date by which the PHA will terminate the HAP contract for the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract.

(g) Records retention. As with all other inspection reports, and as required by § 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be obtained by the PHA. Such reports must be available for HUD inspection for at least three years from the date of the latest inspection.

■ 68. Amend § 982.451 by:

■ a. Adding paragraph headings to paragraphs (a) and (b);

■ b. Revising paragraph (b)(4)(i) introductory text;

■ c. In paragraph (b)(5)(iii) removing the phrase ''program; or'' and adding in its place the phrase ''program or''.

The revision and additions read as follows:

**§ 982.451 Housing assistance payments contract.**

(a) *Form and term.*

* * * * *

(b) *Housing assistance payment amount.*

(4)(i) The part of the rent to owner that is paid by the tenant may not be more than:

* * * * *

■ 69. Delayed indefinitely, amend § 982.451 by adding paragraph (c) to read as follows:

**§ 982.451 Housing assistance payments contract.**

* * * * *

(c) *PHA-owned units.* For PHA-owned units that are not owned by a separate legal entity from the PHA (*e.g.,* an entity wholly controlled by the PHA or a limited liability company or limited partnership owned by the PHA), the PHA must choose one of the following options:

(1) Prior to execution of a HAP contract, the PHA must establish a separate legal entity to serve as the owner. That separate legal entity must execute the HAP contract with the PHA. The separate legal entity must have the legal capacity to lease units and must be one of the following:

(i) A non-profit affiliate or instrumentality of the PHA;

(ii) A limited liability corporation;

(iii) A limited partnership;

(iv) A corporation; or

(v) Any other legally acceptable entity recognized under State law.

(2) The PHA signs the HUD-prescribed PHA-owned certification covering a PHA-owned unit instead of executing the HAP contract for the PHA-owned unit. By signing the PHA-owned certification, the PHA certifies that it will fulfill all the required program responsibilities of the private owner under the HAP contract, and that it will also fulfill all of the program responsibilities required of the PHA for the PHA-owned unit.

(i) The PHA-owned certification serves as the equivalent of the HAP contract, and subjects the PHA, as owner, to all of the requirements of the HAP contract contained in part 982. Where the PHA has elected to use the PHA-owned certification, all references to the HAP contract throughout part 982 must be interpreted to be references to the PHA-owned certification.

(ii) The PHA must obtain the services of an independent entity to perform the required PHA functions identified in § 982.352(b)(1)(v)(A) before signing the PHA-owned certification.

(iii) The PHA may not use the PHA-owned certification if the PHA-owned unit is owned by a separate legal entity from the PHA (*e.g.,* an entity wholly controlled by the PHA or a limited liability corporation or limited partnership controlled by the PHA).

■ 70. Revise § 982.503 to read as follows:

**§ 982.503 Payment standard areas, schedule, and amounts.**

(a) *Payment standard areas.* (1) Annually, HUD publishes fair market rents (FMRs) for U.S. Postal Service ZIP code areas, metropolitan areas, and nonmetropolitan counties (see 24 CFR 888.113). Within each of these FMR areas, the applicable FMR is:

(i) The HUD-published Small Area FMR for:

(A) Any metropolitan area designated as a Small Area FMR area by HUD in accordance with 24 CFR 888.113(c)(1).

(B) Any area where a PHA has notified HUD that the PHA will voluntarily use SAFMRs in accordance with 24 CFR 888.113(c)(3).

(ii) The HUD-published metropolitan FMR for any other metropolitan area.

(iii) The HUD-published FMR for any other non-metropolitan county.

(2) The PHA must adopt a payment standard schedule that establishes voucher payment standard amounts for each FMR area in the PHA jurisdiction. These payment standard amounts are used to calculate the monthly housing assistance payment for a family (§ 982.505).

(3) The PHA may designate payment standard areas within each FMR area. The PHA may establish different payment standard amounts for such designated areas. If the PHA designates payment standard areas, then it must include in its Administrative Plan the criteria used to determine the designated areas and the payment standard amounts for those areas.

(i) The PHA may designate payment standard areas within which payment standards will be established according to paragraph (c) (basic range) or paragraph (d) (exception payment standard), of this section.

(ii) A PHA-designated payment standard area may be no smaller than a census tract block group.

(b) *Payment standard schedule.* For each payment standard area, the PHA must establish a payment standard amount for each unit size, measured by number of bedrooms (zero-bedroom, one-bedroom, and so on). These payment standard amounts comprise the PHA's payment standard schedule.

(c) *Basic range payment standard amounts.* A basic range payment standard amount is any dollar amount that is in the range from 90 percent up to 110 percent of the published FMR for a unit size.

(1) The PHA may establish a payment standard amount within the basic range without HUD approval or prior notification to HUD.

(2) The PHA's basic range payment standard amount for each unit size may be based on the same percentage of the published FMR (*i.e.,* all payment standard amounts may be set at 100 percent of the FMR), or the PHA may establish different payment standard amounts for different unit sizes (for example, 90 percent for efficiencies, 100 percent for 1-bedroom units, 110 percent for larger units).

(3) The PHA must revise its payment standard amounts and schedule no later than 3 months following the effective date of the published FMR if revisions are necessary to stay within the basic range.

(d) *Exception payment standard amounts.* An exception payment standard amount is a dollar amount that exceeds 110 percent of the published FMR.

(1) The PHA may establish exception payment standard amounts for all units, or for units of a particular size. The exception payment standard may be established for a designated part of the FMR area (called an ''exception area'') or for the entire FMR area. The exception area must meet the minimum area requirement at § 982.503(a)(3)(ii).

(2) A PHA that is not in a designated Small Area FMR area or has not opted voluntarily to implement Small Area FMRs under 24 CFR 888.113(c)(3) may establish exception payment standards for a ZIP code area that exceed the basic range for the metropolitan area or county FMR as long as the amounts established by the PHA do not exceed 110 percent of the HUD published SAFMR for the applicable ZIP code. The exception payment standard must apply to the entire ZIP code area. If an exception area crosses one or more FMR boundaries, then the maximum exception payment standard amount that a PHA may adopt for the exception area without HUD approval is 110 percent of the ZIP code area with the lowest SAFMR amount. If the PHA qualifies for an exception payment standard above 110 percent of the applicable FMR under paragraph (d)(3) or (4) of this section, it may establish exception payment standards up to the same percentage of the SAFMR for the applicable ZIP code.

(3) A PHA may establish exception payment standard amounts between 110 percent and 120 percent of the applicable FMR for such duration as HUD specifies by notice upon notification to HUD that the PHA meets at least one of the following criteria:

(i) Fewer than 75 percent of the families to whom the PHA issued tenant-based rental vouchers during the most recent 12-month period for which there is success rate data available have become participants in the voucher program;

(ii) More than 40 percent of families with tenant-based rental assistance administered by the agency pay more than 30 percent of adjusted income as the family share; or

(iii) Such other criteria as the Secretary establishes by notice.

(4) Except as provided in paragraphs (d)(2), (3), and (5) of this section, the PHA must request approval from HUD to establish an exception payment standard amount that exceeds 110 percent of the applicable FMR. In its request to HUD, the PHA must provide rental market data demonstrating that the requested exception payment standard amount is needed for families to access rental units. The rental market data must include a rent estimate for the entire FMR area compared with a rent estimate for the proposed exception area. To apply the exception payment standard to the entire FMR area, the rental market data provided by the PHA must also provide data that demonstrates that the annual percentage of rent inflation in the FMR area is greater than the rental inflation adjustment factor in the calculation of the published FMR. Once HUD has approved the exception payment standard for the requesting PHA, any other PHA with jurisdiction in the HUD approved exception payment standard area may also use the exception payment standard amount.

(5) If required as a reasonable accommodation in accordance with 24 CFR part 8 for a person with a disability, the PHA may establish, without HUD approval or prior notification to HUD, an exception payment standard amount for an individual family that does not exceed 120 percent of the applicable FMR. A PHA may establish a payment standard greater than 120 percent of the applicable FMR as a reasonable accommodation for a person with a disability in accordance with 24 CFR part 8, after requesting and receiving HUD approval.

(e) *Payment standard amount below 90 percent of the applicable FMR.* HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. Unless it is necessary to prevent termination of program participants, HUD will not approve a lower payment standard if the proposed payment standard would, if it were used to calculate the housing assistance payments for current participants in the PHA's voucher program using currently available data, cause the family share for more than 40 percent of participants with tenant-based rental assistance to exceed 30 percent of adjusted monthly income.

(f) *Phaseout of success rate payment standard amounts.* HUD will no longer approve success rate payment standards. However, a PHA that was approved to establish a success rate payment standard amount under this paragraph as in effect prior to June 6, 2024 shall not be required to reduce such payment standard amount as a result of the discontinuance of success rate payment standards.

(g) *Payment standard protection for PHAs that meet deconcentration objectives.* This paragraph applies only to a PHA with jurisdiction in an FMR area where the FMR had previously been set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area, pursuant to 24 CFR 888.113(i)(3), but is now set at the 40th percentile rent.

(1) Such a PHA may obtain HUD Field Office approval of a payment standard amount based on the 50th percentile rent if the PHA scored the maximum number of points on the deconcentration bonus indicator in 24 CFR 985.3(h) in the prior year, or in two of the last three years.

(2) HUD approval of payment standard amounts based on the 50th percentile rent shall be for all unit sizes in the FMR area that had previously been set at the 50th percentile rent pursuant to 24 CFR 888.113(i)(3). A PHA may opt to establish a payment standard amount based on the 50th

percentile rent for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(h) *HUD review of PHA payment standard schedules.* (1) HUD will monitor rent burdens of families assisted with tenant-based rental assistance in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.

(2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range.

■ 71. Amend § 982.505 by revising and republishing paragraph (c) and removing paragraph (d) to read as follows:

**§ 982.505 How to calculate housing assistance payment.**

* * * * *

(c) Payment standard for family—(1) *Applying the payment standard.* The payment standard for the family is the lower of:

(i) The payment standard amount for the family unit size; or

(ii) The payment standard amount for the size of the dwelling unit rented by the family.

(2) *Separate payment standards.* If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with § 982.503 (including an exception payment standard amount as determined in accordance with § 982.503(d)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family.

(3) *Decrease in the payment standard amount during the HAP contract term.* The PHA may choose not to reduce the payment standard amount used to calculate the subsidy for a family for as long as the family continues to reside in the unit for which the family is receiving assistance.

(i) If the PHA chooses to reduce the payment standard amount used to calculate such a family's subsidy in accordance with its Administrative Plan, then the initial reduction to the family's payment standard amount may not be applied any earlier than two years following the effective date of the decrease in the payment standard, and then only if the family has received the notice required under paragraph (c)(3)(iii) of this section.

(ii) The PHA may choose to reduce the payment standard amount for the family to the current payment standard amount in effect on the PHA voucher payment standard schedule, or it may reduce the payment standard amount to an amount that is higher than the normally applicable payment standard amount on the PHA voucher payment standard schedule. After an initial reduction, the PHA may further reduce the payment standard amount for the family during the time the family resides in the unit, provided any subsequent reductions continue to result in a payment standard amount that meets or exceeds the normally applicable payment standard amount on the PHA voucher payment standard schedule.

(iii) The PHA must provide the family with at least 12 months' written notice of any reduction in the payment standard amount that will affect the family if the family remains in place. In the written notice, the PHA must state the new payment standard amount, explain that the family's new payment standard amount will be the greater of the amount listed in the current written notice or the new amount (if any) on the PHA's payment standard schedule at the end of the 12-month period, and make clear where the family will find the PHA's payment standard schedule.

(iv) The PHA must administer decreases in the payment standard amount for the family in accordance with the PHA policy as described in the PHA Administrative Plan.

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the PHA must use the increased payment standard amount to calculate the monthly housing assistance payment for the family beginning no later than the earliest of:

(i) The effective date of an increase in the gross rent that would result in an increase in the family share;

(ii) The family's first regular or interim reexamination; or

(iii) One year following the effective date of the increase in the payment standard amount.

(5) *PHA policy on payment standard increases.* The PHA may adopt a policy to apply a payment standard increase at any time earlier than the date calculated according to paragraph (c)(4).

(6) *Changes in family unit size during the HAP contract term.* Irrespective of any increase or decrease in the payment standard amount, if the family unit size either increases or decreases during the HAP contract term, the new family unit size may be used to determine the payment standard amount for the family immediately but no later than the family's first regular reexamination following the change in family unit size.

■ 72. Amend § 982.517 by revising the first sentence of paragraph (a)(2), and paragraphs (b) and (e) to read as follows:

**§ 982.517 Utility allowance schedule.**

(a) * * *

(2) The PHA must provide a copy of the utility allowance schedule to HUD. * * *

(b) *How allowances are determined.* (1)(i) A PHA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with HQS. The PHA's utility allowance schedule and utility allowance for families must also include any utilities and services required by HUD after publication in the **Federal Register** for public comment.

(ii) In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); applicable surcharges; and other specified housing services.

(iii) The PHA must provide a utility allowance for tenant-paid air-conditioning costs if the majority of housing units in the market provide centrally air-conditioned units or there is appropriate wiring for tenant-installed air conditioners.

(iv) The PHA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

(2)(i) The PHA must maintain an area-wide utility allowance schedule. The area-wide utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole and current utility rates.

(ii) The PHA may maintain an area-wide, energy-efficient utility allowance schedule to be used for units that are in a building that meets Leadership in

Energy and Environmental Design (LEED) or Energy Star standards. HUD may subsequently identify additional Energy Savings Design standards or criteria for applying the allowance to retrofitted units in a building that does not meet the standard, which will be modified or added through a document published in the **Federal Register** for 30 days of public comment, followed by a final document announcing the modified standards and the date on which the modifications take effect. The energy-efficient utility allowance (EEUA) schedule is to be maintained in addition to, not in place of, the area-wide utility allowance schedule described in paragraph (b)(2)(i) of this section, unless all units within a PHA's jurisdiction meet one or more of the required standards.

(iii) The PHA may base its utility allowance payments on actual flat fees charged by an owner for utilities that are billed directly by the owner, but only if the flat fee charged by the owner is no greater than the PHA's applicable utility allowance for the utilities covered by the fee. If an owner charges a flat fee for only some of the utilities, then the PHA must pay a separate allowance for any tenant-paid utilities that are not covered in the flat fee.

(iv) For tenant-based participants residing in units within a project that has an approved project-specific utility allowance under § 983.301(f)(4), the PHA must use the project-specific utility allowance schedule (see 24 CFR 983.301(f)(4)).

(v) The PHA must state its policy for utility allowance payments in its Administrative Plan and apply it consistently to all similarly situated households.

* * * * *

(e) *Higher utility allowance as reasonable accommodation for a person with disabilities.* On request from a household that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation under 24 CFR part 8, the Fair Housing Act and 24 CFR part 100, or Titles II or III of the Americans with Disabilities Act and 28 CFR parts 35 and 36, to make the program accessible to and usable by the household member with a disability.

**§ 982.552 [AMENDED]**

■ 73. Amend § 982.552 by removing paragraph (c)(1)(viii) and redesignating paragraphs (c)(1)(ix) through (xi) as paragraphs (c)(1)(viii) through (x) respectively.

■ 74. Amend § 982.605 by revising the first sentence of paragraph (a) to read as follows:

**§ 982.605 SRO: Housing quality standards.**

(a) * * * As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3). * * * * * * * * *

■ 75. Amend § 982.609 by revising the first sentence of paragraph (a) to read as follows:

**§ 982.609 Congregate housing: Housing quality standards.**

(a) * * * As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3). * * * * * * * * *

■ 76. Amend § 982.614 by revising paragraph (a) to read as follows:

**§ 982.614 Group home: Housing quality standards.**

(a) *Compliance with HQS.* The PHA may not give approval to reside in a group home unless the unit, including the portion of the unit available for use by the assisted person under the lease, meets HQS. As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

* * * * *

■ 77. Amend § 982.618 by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

**§ 982.618 Shared housing: Housing quality standards.**

(a) *Compliance with HQS.* The PHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets HQS.

(b) * * * As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3). * * * * * * * * *

■ 78. Amend § 982.621 by revising the first sentence of the introductory text to read as follows:

**§ 982.621 Manufactured home space rental: Housing quality standards.**

As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for housing assisted under the HCV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3). * * * * * * * * *

■ 79. Revise § 982.623 to read as follows:

**§ 982.623 Manufactured home space rental: Housing assistance payment.**

(a) *Amount of monthly housing assistance payment.* The monthly housing assistance payment is calculated as the lower of:

(1) The PHA payment standard, determined in accordance with § 982.503 minus the total tenant payment; or

(2) The family's eligible housing expenses minus the total tenant payment.

(b) *Eligible housing expenses.* The family's eligible housing expenses are the total of:

(1) The rent charged by the owner for the manufactured home space.

(2) Charges for the maintenance and management the space owner must provide under the lease.

(3) The monthly payments made by the family to amortize the cost of purchasing the manufactured home established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made, including any required insurance and property taxes included in the loan payment to the lender.

(i) Any increase in debt service or term due to refinancing after purchase of the home may not be included in the amortization cost.

(ii) Debt service for installation charges incurred by a family may be included in the monthly amortization payments. Installation charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

(4) The applicable allowances for tenant-paid utilities, as determined under §§ 982.517 and 982.624.

(c) *Distribution of housing assistance payment.* In general, the monthly housing assistance payment is distributed as follows:

(1) The PHA pays the owner of the space the lesser of the housing assistance payment or the portion of the monthly rent due to the owner. The

portion of the monthly rent due to the owner is the total of:

(i) The actual rent charged by the owner for the manufactured home space; and

(ii) Charges for the maintenance and management the space owner must provide under the lease.

(2) If the housing assistance payment exceeds the portion of the monthly rent due to the owner, the PHA may pay the balance of the housing assistance payment to the family. Alternatively, the PHA may pay the balance to the lender or utility company, in an amount no greater than the amount due for the month to each, respectively, subject to the lender's or utility company's willingness to accept the PHA's payment on behalf of the family. If the PHA elects to pay the lender or the utility company directly, the PHA must notify the family of the amount paid to the lender or the utility company and must pay any remaining balance directly to the family.

(d) *PHA option: Single housing assistance payment to the family.* (1) If the owner of the manufactured home space agrees, the PHA may make the entire housing assistance payment to the family, and the family shall be responsible for paying the owner directly for the full amount of rent of the manufactured home space due to the owner, including owner maintenance and management charges. If the PHA exercises this option, the PHA may not make any payments directly to the lender or utility company.

(2) The PHA and owner of the manufactured home space must still execute the HAP contract, and the owner is still responsible for fulfilling all of the owner obligations under the HAP contract, including but not limited to complying with HQS and rent reasonableness requirements. The owner's acceptance of the family's monthly rent payment during the term of the HAP contract serves as the owner's certification to the reasonableness of the rent charged for the space in accordance with § 982.622(b)(4).

(3) If the family and owner agree to the single housing assistance payment, the owner is responsible for collecting the full amount of the rent and other charges under the lease directly from the family. The PHA is not responsible for any amounts owed by the family to the owner and may not pay any claim by the owner against the family.

■ 80. Amend § 982.625 by adding headings to paragraphs (a), (b), (c)(1), (f), and (g) to read as follows:

**§ 982.625 Homeownership option: General.**

(a) *Applicability.* * * *

(b) *Family status.* * * *

(c) * * *

(1) *Allowable forms of homeownership assistance.* * * *

* * * * *

(f) *Live-in aide.* * * *

(g) *PHA capacity.* * * *

* * * * *

■ 81. Amend § 982.628 by:

■ a. In paragraph (a)(1), removing '', (a)(7)'' from the citation; and

■ b. Revising paragraphs (d) introductory text, (d)(3) introductory text, and (e)(3).

The revisions read as follows:

**§ 982.628 Homeownership option: Eligible units.**

* * * * *

(d) *PHA-owned units.* A family may purchase a PHA-owned unit, as defined in § 982.4, with homeownership assistance only if the following conditions are satisfied:

* * * * *

(3) The PHA must obtain the services of an independent entity, as defined in § 982.4 and in accordance with § 982.352(b)(1)(v)(B), to perform the following PHA functions:

* * * * *

(e) * * *

(3) The unit has passed the required HQS inspection (see § 982.631(a)) and independent inspection (see § 982.631(b)).

■ 82. Amend § 982.630 by:

■ a. Adding headings to paragraphs (a), (b), (c), and (d); and

■ b. Revising paragraph (e).

The revision and additions read as follows:

**§ 982.630 Homeownership option: Homeownership counseling.**

(a) *Pre-assistance counseling.* * * *

(b) *Counseling topics.* * * *

(c) *Local circumstances.* * * *

(d) *Additional counseling.* * * *

(e) *HUD-certified housing counselor.* Any homeownership counseling provided to families in connection with this section must be conducted by a HUD certified housing counselor working for an agency approved to participate in HUD's Housing Counseling Program.

■ 83. Amend § 982.635 by:

■ a. Revising paragraph (b)(3); and

■ b. In paragraphs (c)(2)(vii) and (3)(vii), removing ''part 8 of this title'' and adding, in its place, ''parts 8 and 100 of this title''.

The revision reads as follows:

**§ 982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.**

* * * * *

(b) * * *

(3) The payment standard amount may not be lower than what the payment standard amount was at commencement of homeownership assistance.

* * * * *

■ 84. Amend § 982.641 by removing ''and'' from the end of paragraph (d)(2), revising paragraph (d)(3), adding paragraph (d)(4), and revising paragraph (f)(3) to read as follows:

**§ 982.641 Homeownership option: Applicability of other requirements.**

* * * * *

(d) * * *

(3) Section 982.405 (PHA unit inspection); and

(4) Section 982.406 (Use of alternative inspections).

* * * * *

(f) * * *

(3) Section 982.517 (Utility allowance schedule), except that § 982.517(d) does not apply because the utility allowance is always based on the size of the home bought by the family with homeownership assistance.

* * * * *

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

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

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

### Subpart A—General

■ 86. Amend § 983.2 by revising and republishing paragraph (c) to read as follows:

**§ 983.2 When the tenant-based voucher rule (24 CFR part 982) applies.**

* * * * *

(c) *Specific 24 CFR part 982 provisions that do not apply to PBV assistance.* The following specific provisions in 24 CFR part 982 do not apply to PBV assistance under part 983:

(1) In subpart D of part 982: paragraph (e)(2) of 24 CFR 982.158;

(2) In subpart E of part 982: paragraph (e) of 24 CFR 982.201, paragraph (b)(2) of 24 CFR 982.202, and paragraph (d) of 24 CFR 982.204;

(3) Subpart G of part 982 does not apply, with the following exceptions:

(i) Section 982.310 (owner termination of tenancy) applies to the PBV program, but to the extent that those provisions differ from § 983.257, the provisions of § 983.257 govern; and

(ii) Section 982.312 (absence from unit) applies to the PBV Program, but to the extent that those provisions differ from § 983.256(g), the provisions of § 983.256(g) govern; and

(iii) Section 982.316 (live-in aide) applies to the PBV Program;

(4) Subpart H of part 982;

(5) In subpart I of part 982: 24 CFR 982.401; paragraphs (a)(3), (c), and (d) of 24 CFR 982.402; 24 CFR 982.403; 24 CFR 982.404; paragraphs (a), (b), (d), (i), and (j) of 24 CFR 982.405; paragraphs (a), (e), and (f) of 24 CFR 982.406; and 24 CFR 982.407;

(6) In subpart J of part 982: paragraphs (a), (b)(3), (b)(4), and (c) of § 982.451; and § 982.455;

(7) Subpart K of part 982: subpart K does not apply, except that the following provisions apply to the PBV Program:

(i) In 24 CFR 982.503, paragraphs (a)(1) and (d)(1)–(4) do apply;

(ii) Section 982.516 (family income and composition; regular and interim examinations);

(iii) Section 982.517 of this title (utility allowance schedule), except that 24 CFR 982.517(d) does not apply.

(8) In subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and

(ii) Provisions concerning shared housing (§ 982.615 through § 982.618), manufactured home space rental (§ 982.622 through § 982.624), and the homeownership option (§ 982.625 through § 982.641).

■ 87. Revise and republish § 983.3 to read as follows:

**§ 983.3 PBV definitions.**

(a) *General.* This section defines PBV terms used in this part. For administrative ease and convenience, those part 982 terms that are also used in this part are identified in this section. In limited cases, where there is a slight difference with the part 982 term, an annotation is made in this section.

(b) *Definitions.* The following definitions apply to this part:

*Abatement.* See 24 CFR 982.4.

*Administrative fee.* See 24 CFR 982.4.

*Administrative fee reserve.* See 24 CFR 982.4.

*Administrative Plan.* See 24 CFR 982.4.

*Admission.* The point when the family becomes a participant in the PHA's tenant-based or project-based voucher program. If the family is not already a tenant-based voucher participant, the date of admission for the project-based voucher program is the first day of the initial lease term (the commencement of the assisted tenancy) in the PBV unit. After admission, and so long as the family is continuously assisted with tenant-based or project-based voucher assistance from the PHA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

*Agreement to enter into HAP contract (Agreement).* A written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development activity undertaken for units to be assisted under this section. When development is completed by the owner in accordance with the Agreement, the PHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section.

*Applicant.* A family that has applied for admission to the PBV program but is not yet a program participant.

*Area where vouchers are difficult to use.* An area where a voucher is difficult to use is:

(i) A census tract with a poverty rate of 20 percent or less, as determined by HUD;

(ii) A ZIP code area where the rental vacancy rate is less than 4 percent, as determined by HUD; or

(iii) A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan area or county FMR.

*Assisted living facility.* A residence facility (including a facility located in a larger multifamily property) that meets all the following criteria:

(i) The facility is licensed and regulated as an assisted living facility by the State, municipality, or other political subdivision;

(ii) The facility makes available supportive services to assist residents in carrying out activities of daily living; and

(iii) The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and available to provide supportive services for the residents.

*Authorized voucher units.* See 24 CFR 982.4.

*Budget authority.* See 24 CFR 982.4.

*Building.* See 24 CFR 982.4.

*Comparable tenant-based rental assistance.* A tenant-based subsidy to enable a family to obtain decent, safe, and sanitary housing in the PHA jurisdiction, which meets the following minimum requirements:

(i) The family's monthly payment is not more than 40 percent of the family's adjusted monthly gross income;

(ii) The rental assistance contains no limitation as to the length of time the family may receive the assistance;

(iii) The family is not required to be employed, to seek employment, or to participate in supportive services in order to receive the rental assistance; and

(iv) The family is able to use the rental assistance in one or more other PHAs' jurisdictions.

*Congregate housing.* See 24 CFR 982.4.

*Continuously assisted.* See 24 CFR 982.4.

*Contract units.* The housing units covered by a HAP contract.

*Cooperative.* See 24 CFR 982.4.

*Cooperative member.* See 24 CFR 982.4.

*Covered housing provider.* For the PBV program, ''covered housing provider,'' as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the PHA or owner (as defined in 24 CFR 982.4), as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).

*Development activity.* New construction or rehabilitation work done after the proposal or project selection date in order for a newly constructed or rehabilitated housing project to be covered by a PBV HAP contract, including work done pursuant to a rider to the HAP contract in accordance with § 983.157.

*Excepted units.* Units in a project not counted toward the project cap because they exclusively serve or are made available to certain families. See § 983.54(c)(2).

*Excluded units.* Units in a project not counted toward the program cap or project cap because they meet certain criteria. See § 983.59.

*Existing housing.* A project that meets the following criteria:

(i) All the proposed contract units in the project either fully comply or substantially comply with HQS on the proposal or project selection date, as determined per § 983.103(a). (The units must fully comply with HQS at the time

required by § 983.103(c)). The units substantially comply with HQS if:

(A) The units only require repairs to current components or replacement of equipment and/or materials by items of substantially the same kind to correct deficiencies; and

(B) The PHA determines all deficiencies can reasonably be corrected within a 30-day period, taking into consideration the totality of the deficiencies in the project.

(ii) The PHA determines the project is not reasonably expected to require substantial improvement and the owner certifies it has no plans to undertake substantial improvement from the proposal submission date (for projects subject to competitive selection) or the project selection date (for projects excepted from competitive selection) through the first two years of the HAP contract.

*Family.* See 24 CFR 982.4.

*Family self-sufficiency program.* See 24 CFR 982.4.

*Gross rent.* See 24 CFR 982.4.

*Group home.* See 24 CFR 982.4.

*HAP contract.* See 24 CFR 982.4.

*Household.* See 24 CFR 5.100.

*Housing assistance payment.* The monthly assistance payment for a PBV unit by a PHA, which includes:

(i) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and

(ii) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

*Housing credit agency.* For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a State participating jurisdiction under HUD's HOME program (see 24 CFR part 92), or other State housing agencies that meet the definition of ''housing credit agency'' as defined by Section 42 of the Internal Revenue Code of 1986.

*Housing quality standards (HQS).* The minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the PBV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

*Independent entity.* See 24 CFR 982.4, except that the independent entity is subject to the requirements in § 983.57 (instead of 24 CFR 982.352(b) and 24 CFR 982.628(d)) for the PBV program.

*Initial rent to owner.* See 24 CFR 982.4.

*In-place family.* A family residing in a proposed contract unit on the proposal or project selection date.

*Jurisdiction.* See 24 CFR 982.4.

*Lease.* See 24 CFR 982.4.

*Manufactured home.* See 24 CFR 982.4.

*Multifamily building.* A building with five or more dwelling units (assisted or unassisted).

*Newly constructed housing.* A project containing housing units that do not exist on the proposal or project selection date and are developed after the date of selection for use under the PBV program.

*Owner.* See 24 CFR 982.4.

*Partially assisted project.* A project in which there are fewer contract units than residential units.

*Participant.* A family that has been admitted and is currently assisted in the PBV (or HCV) program. If the family is not already a tenant-based voucher participant, the family becomes a participant on the effective date of the initial lease term (the commencement of the assisted tenancy) in the PBV unit.

*PHA Plan.* See 24 CFR 982.4.

*PHA-owned unit.* See 24 CFR 982.4.

*Premises.* The project in which the contract unit is located, including common areas and grounds.

*Program.* The voucher program under Section 8 of the 1937 Act, including tenant-based or project-based assistance.

*Program receipts.* See 24 CFR 982.4.

*Project.* A project can be a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. ''Contiguous'' in this definition includes ''adjacent to,'' as well as touching along a boundary or a point. A PHA may, in its Administrative Plan, establish the circumstances under which it will define a project as only one of the following: a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

*Proposal or project selection date.* See § 983.51(g).

*Public housing agency (PHA).* See 24 CFR 982.4.

*Reasonable rent.* See 24 CFR 982.4.

*Rehabilitated housing.* A project which is developed for use under the PBV program, in which all proposed contract units exist on the proposal or project selection date, but which does not qualify as existing housing.

*Rent to owner.* The total monthly rent payable by the family and the PHA to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance, and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services including payment for food, furniture, or supportive services provided in accordance with the lease.)

*Responsible entity (RE) (for environmental review).* The unit of general local government within which the project is located that exercises land use responsibility or, if HUD determines this infeasible, the county or, if HUD determines that infeasible, the State.

*Single-family building.* A building with no more than four dwelling units (assisted or unassisted).

*Single room occupancy housing (SRO).* See 24 CFR 982.4.

*Site.* The grounds where the contract units are located or will be located after development.

*Small Area Fair Market Rents (SAFMRs).* See 24 CFR 982.4. (See also 24 CFR 888.113(c)(5).)

*Special housing type.* Subpart M of 24 CFR part 982 states the special regulatory requirements for different special housing types. Subpart M provisions on shared housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

*Subsidy standards.* See 24 CFR 982.4.

*Substantial improvement.* One of the following activities undertaken at a time beginning from the proposal submission date (for projects subject to competitive selection) or from the project selection date (for projects excepted from competitive selection), or undertaken during the term of the PBV HAP contract:

(i) Remodeling that alters the nature or type of housing units in a project;

(ii) Reconstruction; or

(iii) A substantial improvement in the quality or kind of equipment and materials. The replacement of equipment and/or materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does not constitute substantial improvement.

*Tenant.* See 24 CFR 982.4.

*Tenant rent.* The amount payable monthly by the family as rent to the unit owner, as described in § 983.353(b). (See also 24 CFR 5.520(c)(1)).

*Tenant-paid utilities.* See 24 CFR 982.4.

*Total tenant payment.* See 24 CFR 5.628.

*Utility allowance.* See 24 CFR 5.603.

*Utility reimbursement.* See 24 CFR 5.603.

*Waiting list admission.* An admission from the PHA- or owner-maintained PBV waiting list in accordance with § 983.251.

*Wrong-size unit.* A unit occupied by a family that does not conform to the PHA's subsidy standard for family size, by being either too large or too small compared to the standard.

**§ 983.4 [Amended]**

■ 88. Amend § 983.4 by removing the provision for ''*Definitions.*''.

■ 89. Revise and republish § 983.5 to read as follows:

**§ 983.5 Description of the PBV program.**

(a) *How PBV works.* (1) The PBV program is administered by a PHA that already administers the tenant-based voucher program under the consolidated annual contributions contract (ACC) in 24 CFR 982.151. In the PBV program, the assistance is ''attached to the structure,'' which may be a multifamily building or single-family building. (See description of the difference between ''project-based'' and ''tenant-based'' rental assistance at 24 CFR 982.1(b)).

(2) The PHA enters into a HAP contract with an owner for units in existing housing or in newly constructed or rehabilitated housing.

(3) In the case of new construction or rehabilitation, the owner may develop the housing pursuant to an Agreement (§ 983.154) between the owner and the PHA. In the Agreement, the PHA agrees to execute a HAP contract after the owner completes the construction or rehabilitation of the units. Alternatively:

(i) The owner may develop the housing without an Agreement, before execution of a HAP contract, in accordance with § 983.154(f); or

(ii) In the case of rehabilitation, the owner may develop the housing or complete development activity after execution of the HAP contract, in accordance with § 983.157.

(4) During the term of the HAP contract, the PHA makes housing assistance payments to the owner for units leased and occupied by eligible families.

(b) *How PBV is funded.* If a PHA decides to operate a PBV program, the PHA's PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA's voucher ACC. This funding is used to pay housing assistance for both tenant-based and project-based voucher units. Likewise, the administrative fee funding made available to a PHA is used for the administration of both tenant-based and project-based voucher assistance.

(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a PBV program. HUD approval is not required, except that the PHA must notify HUD of its intent to project-base its vouchers and when the PHA executes, amends, or extends a HAP contract. The PHA must also state in its Administrative Plan that it will engage in project-basing and must amend its Administrative Plan to include all PBV-related matters over which the PHA is exercising its policymaking discretion, including the subjects listed in § 983.10, as applicable.

■ 90. Revise and republish § 983.6 to read as follows:

**§ 983.6 Maximum number of PBV units (percentage limitation).**

(a) *In general.* Except as provided in paragraphs (d) and (e) of this section, a PHA may commit project-based assistance to no more than 20 percent of its authorized voucher units, as adjusted as provided in paragraph (e) of this section, at the time of commitment. An analysis of impact must be conducted in accordance with § 983.58, if a PHA is project-basing 50 percent or more of the PHA's authorized voucher units.

(1) A PHA is not required to reduce the number of units to which it has committed PBV assistance under an Agreement or HAP contract if the number of authorized voucher units is subsequently reduced and the number of PBV units consequently exceeds the program limitation.

(2) A PHA that was within the program limit prior to April 18, 2017, and exceeded the program limit on that date due solely to the change in how the program cap is calculated is not required to reduce the number of PBV units under an Agreement or HAP contract.

(3) In the circumstances described in paragraphs (a)(1) and (2) of this section, the PHA may not add units to PBV HAP contracts, or enter into new Agreements or HAP contracts (except for HAP contracts resulting from Agreements entered into before the reduction of authorized units or April 18, 2017, as applicable), unless such units meet the conditions described in paragraph (d) or (e) of this section.

(b) *Units subject to percentage limitation.* All PBV units which the PHA has selected (from the time of the proposal or project selection date) or which are under an Agreement or HAP contract for PBV assistance count toward the 20 percent maximum or increased cap, as applicable, except as provided in paragraph (e).

(c) *PHA determination.* The PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC.

(d) *Increased cap.* A PHA may project-base an additional 10 percent of its authorized voucher units at the time of commitment, as adjusted as provided in paragraph (e) of this section, provided the additional units meet the conditions in paragraphs (d)(1) or (2) of this section:

(1) The units are part of a HAP contract executed on or after April 18, 2017, or are added on or after that date to any current HAP contract, including a contract entered into prior to April 18, 2017, and the units fall into at least one of the following categories:

(i) The units are specifically made available to house individuals and families that meet the definition of homeless under Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), included in 24 CFR 578.3.

(ii) The units are specifically made available to house families that are comprised of or include a veteran. For purposes of the increased cap, a veteran means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom.

(iii) The units provide supportive housing to persons with disabilities or to elderly persons, as defined in 24 CFR 5.403. Supportive housing means that the project makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing. Such supportive services need not be provided by the owner or on site but must be reasonably available to the families receiving PBV assistance in the project. The PHA's Administrative Plan must describe the type and availability of supportive services the PHA will consider as qualifying for the 10 percent increased cap.

(iv) The units are located in an area where vouchers are difficult to use as defined in § 983.3.

(v) The units replace, on a different site, the units listed in § 983.59(b)(1) and (2) for which the PHA had authority under § 983.59 to commit PBV assistance on the original site without the units counting toward the program cap or project cap. The units are eligible under this category only if the PHA has not committed and will not commit PBV assistance to the original site pursuant to the normally applicable exclusions of those units under § 983.59. If the PHA subsequently plans to commit PBV assistance to units on the original site, those proposed units count toward and must comply with the 20 percent maximum or increased cap of this section, as applicable, and the project cap requirements of § 983.54.

(2) The units are part of a HAP contract executed on or after December 27, 2020, or are added on or after that date to any current HAP contract, including a contract entered into prior to December 27, 2020, and meet the following requirements:

(i) The units are exclusively made available to eligible youth as described in Section 8(x)(2)(B) of the U.S. Housing Act; and

(ii) If the units exclusively made available to eligible youth use Family Unification Program (FUP) assistance that is normally available for eligible families and youth described in Section 8(x)(2) of the U.S. Housing Act, the PHA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth) and amends its Administrative Plan to specify that FUP PBV assistance is solely for eligible youth.

(3) The PBV HAP contract must specify, and the owner must set aside, the number of units meeting the conditions of paragraphs (d)(1)(i), (ii), (iii) and (d)(2) of this section. To qualify for the increased program cap for units meeting the conditions of paragraphs (d)(1)(i), (ii), (iii) and (d)(2) of this section, the unit must be occupied by the type of family specified in the applicable paragraph consistent with the requirements of § 983.262.

(e) *Units previously subject to federally required rent restrictions or that received long-term rental assistance from HUD.* Units that meet the requirements of § 983.59 do not count toward the program cap. Such units are removed from the number of authorized voucher units for purposes of calculating the percentages under paragraphs (a) and (d) of this section.

■ 91. Revise § 983.10 to read as follows:

**§ 983.10 PBV provisions in the Administrative Plan.**

(a) *PHA policymaking discretion.* If a PHA exercises its discretion to operate a PBV program, the PHA's Administrative Plan as required by 24 CFR 982.54 of this title must include all the PHA's local policies on PBV-related matters over which the PHA is exercising its policymaking discretion.

(b) *PHA policies.* The PHA Administrative Plan must cover, at a minimum, the following PHA policies, as applicable:

(1) The definition of ''project'' as consistent with this part (§ 983.3(b));

(2) The program cap:

(i) A description of the types and availability of services that will qualify units under the supportive services authority under the program cap (§ 983.6(d)(1)(iii)); and

(ii) The PHA's policy limiting Family Unification Program assistance normally available for eligible families and youth described in Section 8(x)(2) of the U.S. Housing Act to youth (§ 983.6(d)(2)(ii));

(3) A description of the circumstances under which the PHA will use the competitive and noncompetitive selection methods and the procedures for submission and selection of PBV proposals (§ 983.51(a));

(3) A description of the circumstances under which the PHA will use the competitive and noncompetitive selection methods and the procedures for submission and selection of PBV proposals (§ 983.51(a));

(4) The project cap:

(i) The PHA's policy limiting Family Unification Program assistance normally available for eligible families and youth described in Section 8(x)(2) of the U.S. Housing Act to youth (§ 983.54(c)(2)(ii)); and

(ii) A description of the types and availability of services that will qualify units under the supportive services exception from the project cap (§ 983.54(c)(2)(iii));

(5) The site selection standards:

(i) The PHA's standard for deconcentrating poverty and expanding housing and economic opportunities (§ 983.55(b)(1)); and

(ii) The PHA's site selection policy (§ 983.55(c));

(6) PHA inspection policies:

(i) The timing of an initial inspection of existing housing (§ 983.103(c)(1));

(ii) Whether the PHA adopts for initial inspection of PBV existing housing the non-life-threatening deficiencies option, the alternative inspection option, or both, and whether the PHA adopts for periodic inspection of PBV housing the alternative inspection option. If so, state all policies as required by 24 CFR 982.54(d)(21)(ii) and (iii), as they relate to the PHA's PBV program (§ 983.103(c)(2) through (4) and (e)(3));

(iii) The frequency of periodic inspections (§ 983.103(e) and (i)); and

(iv) Any verification methods other than on-site inspection for different inspection types or for different HQS deficiencies (§ 983.103(h)).

(7) A description of the circumstances (if any) under which the PHA will establish additional requirements for quality, architecture, or design of PBV housing at the time of initial rehabilitation or new construction (§§ 983.154(e)(11), 983.157(e)(4));

(8) A description of the circumstances (if any) under which the PHA will enter a PBV HAP contract for newly constructed and rehabilitated housing without first entering into an Agreement or execute an Agreement after construction or rehabilitation that complied with applicable requirements of § 983.153 has commenced (§ 983.154(f)(1));

(9) The PHA's policy on the form and manner in which the owner must submit evidence and certify that work has been completed (§ 983.155);

(10) Rehabilitated housing developed after HAP contract execution:

(i) A description of the circumstances (if any) under which the PHA will enter a PBV HAP contract for rehabilitated housing that allows for development activity to occur after HAP contract execution (§ 983.157(a)(2));

(ii) The timing of the initial inspection (§ 983.157(c)(4));

(iii) The form and manner of owner notifications of changes in the status of contract units (§ 983.157(e)(5)); and

(iv) The period for compliance (if any) for development activity that has not been completed by the deadline (§ 983.157(h)(1));

(11) The PHA's policy on amending PBV HAP contracts to substitute or add contract units (§ 983.207(f));

(12) PHA housing quality policies;

(i) A description of the circumstances (if any) under which the PHA will establish additional requirements for continued compliance with quality, architecture, or design of PBV housing during the term of the HAP contract (§ 983.208(a)(3));

(ii) The PHA's policy on the conditions under which it will withhold HAP and the conditions under which it will abate HAP or terminate the contract for units other than the unit with HQS deficiencies (§ 983.208(d)); and

(iii) The PHA's policy on assisting families with relocating and finding a new unit (§ 983.208(d)(6)(iii));

(13) A description of the PHA's waiting list policies for admission to PBV units, including any information on the owner waiting list policy (§ 983.251(c) and (e));

(14) A description of the PHA's policy on whether to conduct tenant screening and offer information to an owner (§ 983.255(a)(2) and (c)(4));

(15) The PHA's policy on continued housing assistance for a family that occupies a wrong-sized unit or a unit with accessibility features that the family does not require (§ 983.260(b));

(16) The PHA's policy on a family's right to move:

(i) The form of tenant-based rental assistance that the PHA will offer families (§ 983.261(b)); and

(ii) The procedures for tenants to request tenant-based rental assistance to move (§ 983.261(c));

(17) The PHA's policy regarding which options it will take if a unit is no longer qualified for excepted status or the increased program cap (§ 983.262(b)(4));

(18) The PHA's policy regarding continued occupancy of a unit under

the increased program cap for supportive housing for persons with disabilities or elderly persons and units excepted based on elderly or disabled family status after a change in family composition removing the elderly family member or family member with a disability (§ 983.262(c)(3)(ii), (d)(1), and (d)(2));

(19) The PHA's policy regarding the PHA-determined amount it will use to calculate rent to owner (§ 983.301(b)(1) and (c)(2)(i));

(20) The PHA's policy on the required timing and form of owner requests for a rent increase (§ 983.302(a)(1));

(21) The PHA's policy on providing vacancy payments, including the required form and manner of requests for vacancy payments (§ 983.352(b)(1) and (4));

(22) The PHA's policy on utility reimbursements (§ 983.353(d)(2)); and

(23) The PHA's policy on applying SAFMRs to its PBV program per 24 CFR 888.113(h).

■ 92. Add § 983.11 to subpart A to read as follows:

**§ 983.11 Prohibition of excess public assistance.**

(a) *PBV assistance for newly constructed and rehabilitated housing.* The PHA may provide PBV assistance for newly constructed and rehabilitated housing only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements.

(b) *PBV assistance for existing housing.* The subsidy layering requirements are not applicable to existing housing.

(c) *Development activity before HAP contract.* For the subsidy layering requirements related to development activity to place newly constructed or rehabilitated housing under a HAP contract, see § 983.153(b).

(d) *Additional assistance after HAP contract.* (1) For newly constructed or rehabilitated housing under a HAP contract, the owner must disclose to the PHA, in accordance with HUD requirements, information regarding any additional related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof. Such related assistance includes but is not limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

(2) If the additional related assistance in paragraph (d)(1) of this section meets certain threshold and other requirements established by HUD through publication in the **Federal Register**, a subsidy layering review may be required to determine if it would result in excess public assistance to the project.

(3) Housing assistance payments must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA must adjust, in accordance with HUD requirements, the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

■ 93. Add § 983.12 to subpart A to read as follows:

**§ 983.12 Project record retention.**

(a) *Records retained according to the contract term.* For each PBV project, the PHA must maintain the following records throughout the HAP contract term and for three years thereafter:

(1) Records to document the basis for PHA selection of the proposal, if selection is competitive, or project, if selection is noncompetitive, including records of the PHA's site selection determination (see § 983.55) and records to document the completion of the review of the selection process in the case of PHA-owned units and copies of the written notice of proposal selection and response of the appropriate party;

(2) The analysis of impact (see § 983.58(b)), if applicable;

(3) The subsidy layering determination, if applicable;

(4) The environmental review record, if applicable;

(5) The Agreement to enter into HAP contract, if applicable;

(6) Evidence of completion (see § 983.155), if applicable;

(7) The HAP contract and any rider and/or amendments, including amendments to extend the term of the contract;

(8) Records to document the basis for PHA determination and redetermination of rent to owner;

(9) Records to document HUD approval of the independent entity or entities, in the case of PHA-owned units;

(10) Records of the accessibility features of the project and each contract unit; and

(11) Other records as HUD may require.

(b) [RESERVED]

■ 94. Revise subpart B to read as follows:

## Subpart B—Selection of PBV Proposals and Projects

Sec.



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

**§ 983.51 Proposal and project selection procedures.**

(a) *General procedures for submission and selection.* The PHA Administrative Plan must describe the procedures for submission and selection of PBV proposals under the methods of competitive selection in paragraph (b) of this section and selection of projects under an exception to competitive selection under paragraph (c) of this section. The description must include under what circumstances the PHA will use the selection methods described in paragraphs (b) and (c) of this section. The PHA may allow for entities that have site control to submit proposals provided the entity will be the owner prior to entering into the Agreement or HAP contract. Before selecting a PBV proposal or project, the PHA must determine that the PBV proposal or project complies with HUD program regulations and requirements, including a determination that the property is eligible housing (§§ 983.52 and 983.53), complies with the cap on the number of PBV units per project (§ 983.54), and meets the site selection standards (§ 983.55). An owner may submit, and a PHA may select, a single proposal covering multiple projects where each project consists of a single-family building, provided all projects are the same housing type (existing, rehabilitated, or newly constructed).

(b) *Methods of competitive selection.* The PHA must select PBV proposals in accordance with the selection procedures in the PHA Administrative Plan. (See paragraph (f) of this section for information about the selection of PHA-owned units.) The PHA must select PBV proposals by either of the following two methods:

(1) The PHA may issue a request for proposals (RFP), selecting a PBV proposal through a competition. The PHA's RFP may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites. A PHA may establish selection procedures in the Administrative Plan that combine or are

in conjunction with other Federal, State, or local government housing assistance, community development, or supportive services competitive selection processes. If the PHA selection process is combined and administered in conjunction with another RFP process, the PHA remains responsible for complying with § 983.51. See § 983.157(a)(2) for additional requirements for an RFP for rehabilitated housing.

(2) The PHA may select, without issuing an RFP, a proposal for housing assisted under a Federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals, where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date. The PHA may not select a housing assistance proposal using this method if the competition involved any consideration that the project would receive PBV assistance.

(c) *Exceptions to competitive selection.* Prior to selection under this paragraph (c), the PHA must notify the public of its intent to noncompetitively select one or more projects for PBV assistance through its 5-Year Plan.

(1) A PHA engaged in an initiative to improve, develop, or replace a public housing property or site may select for PBV assistance an existing, newly constructed, or rehabilitated project in which the PHA has an ownership interest or over which the PHA has control without following a competitive process.

(i) With respect to replacement housing, the PHA does not have to replace the housing on the same site as the original public housing, but the number of contract units in the replacement project may not exceed the number of units in the original public housing project by more than a de minimis amount for this exception to apply.

(ii) The public housing properties or sites may be in the public housing inventory at the time of project selection or they may have been removed from the public housing inventory through any available legal removal tool within five years of the project selection date.

(2) A PHA may select for future PBV assistance a project currently under the public housing program, or a project that is replacing the public housing project, in which a PHA has no ownership interest, or which a PHA has no control over, without following a competitive process, provided:

(i) The public housing project is either still in the public housing inventory or had been removed from the public housing inventory through any available legal removal tool within five years of the project selection date;

(ii) The PHA that owned or owns the public housing project does not administer the HCV program;

(iii) The project selected for PBV assistance was specifically identified as replacement housing for the impacted public housing residents as part of the public housing demolition/disposition application, voluntary conversion application, or any other application process submitted to and approved by HUD to remove the public housing project from the public housing inventory; and

(iv) With respect to replacement housing, the PHA does not have to replace the housing on the same site as the original public housing, but the number of contract units in the replacement project may not exceed the number of units in the original public housing project by more than a de minimis amount for this exception to apply.

(3) A PHA may select for PBV assistance a project consisting of PHA-owned units as defined at 24 CFR 982.4 without following a competitive process.

(i) The project units must continue to meet the definition of PHA-owned for the initial two years of the HAP contract unless there is a transfer of ownership approved by HUD.

(ii) The PHA must meet any conditions with respect to selection for PBV assistance of a project consisting of PHA-owned units without following a competitive process as may be established by HUD through publication in the **Federal Register** notice after providing opportunity for public comment.

(4) A PHA may select for PBV assistance a project that underwent an eligibility event within five years of the project selection date, in which a family (or families) qualifies for enhanced voucher assistance under Section 8(t) of the Act and provides informed consent to relinquish its enhanced voucher for PBV assistance, without following a competitive process.

(d) *Public notice of PHA request for PBV proposals.* If the PHA will be selecting proposals under paragraph (b)(1) of this section, PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

(e) *Inspections required prior to proposal or project selection.* (1) The PHA must examine the proposed site before the proposal or project selection date to determine whether the site complies with the site selection standards in accordance with § 983.55.

(2) The PHA may execute a HAP contract for existing housing if:

(i) All proposed contract units in the project fully or substantially comply with the HQS on the proposal or project selection date, which the PHA must determine via inspection;

(iii) The project meets the initial inspection requirements in accordance with § 983.103(c).

(iii) The project meets the initial inspection requirements in accordance with § 983.103(c).

(f) *PHA written notice of proposal or project selection.* (1) For selection of proposals through competitive methods under paragraph (b) of this section, the PHA must give prompt written notice of proposal selection to the party that submitted a selected proposal and must also give prompt public notice of such selection. The PHA's requirement to provide public notice may be met via publication of the public notice in a local newspaper of general circulation or other means designed and actually operated to provide broad public notice. The written notice of proposal selection must require the owner or party that submitted the selected proposal to provide a written response to the PHA accepting the terms and requirements stated in the notice.

(2) For selection of projects through exceptions to competition under paragraph (c) of this section, the PHA must give prompt written notice of project selection to the owner following the PHA board's resolution approving the project-basing of assistance at the specific project. The written notice of project selection must require the owner of the project selected to provide a written response to the PHA accepting the terms and requirements stated in the notice.

(3) Regardless of the method of selection, if the project contains PHA-owned units that are not owned by a separate legal entity from the PHA, the PHA must provide the written notice of proposal or project selection to the

responsible PHA official, and that official must certify in writing that the PHA accepts the terms and requirements stated in the notice.

(4) When an environmental review is required, if such a review has not been conducted prior to the project or proposal selection date, the PHA's written notice of project or proposal selection must state that the selection is subject to completion of a favorable environmental review and that the project or proposal may be rejected based on the results of the environmental review in accordance with 983.56(c).

(5) See § 983.153(c)(3) for additional notice requirements for newly constructed housing and rehabilitated housing.

(g) *Proposal or project selection date.* (1) The proposal selection date is the date on which the PHA provides written notice to the party that submitted the selected proposal under either paragraph (b)(1) or (2) of this section.

(2) For properties selected in accordance with § 983.51(c), the project selection date is the date of the PHA's board resolution approving the project-basing of assistance at the specific project.

(h) *PHA-owned units.* A PHA-owned unit may be assisted under the PBV program only if the HUD field office or the independent entity reviews the project selection process the PHA undertook and determines that the project was appropriately selected based on the selection procedures specified in the PHA Administrative Plan. Under no circumstance may a HAP contract be effective for any of the subsidized housing types set forth in § 983.53(a). With the exception of projects selected in accordance with § 983.51(c), the PHA's selection procedures must be designed in a manner that does not effectively eliminate the submission of proposals for non-PHA-owned units or give preferential treatment (*e.g.,* additional points) to PHA-owned units.

(i) *Public review of PHA selection decision documentation.* The PHA must make documentation available for public inspection regarding the basis for the PHA selection of a PBV proposal.

(j) *Previous participation clearance.* HUD approval of specific projects or owners is not required. For example, owner proposal selection does not require submission of form HUD–2530 (Previous Participation Certification) or other HUD previous participation clearance.

(k) *Excluded from Federal procurement.* A PHA may not commit project-based assistance to a project if the owner or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424 or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or non-procurement programs.

**§ 983.52 Prohibition of assistance for ineligible units.**

(a) *Ineligible unit.* A HAP contract must not be effective and no PBV assistance may be provided for any of the following:

(1) Shared housing;

(2) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;

(3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, the PHA may execute a HAP contract and provide PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;

(4) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;

(5) Manufactured homes are ineligible only if the manufactured home is not permanently affixed to a permanent foundation or the owner does not own fee title to the real property (land) on which the manufactured home is located; and

(6) Transitional Housing.

(b) *Prohibition against assistance for owner-occupied unit.* A HAP contract must not be effective and no PBV assistance may be provided for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

(c) *Prohibition against selecting unit occupied by an ineligible family.* Before a PHA places a specific unit under a HAP contract, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance in accordance with § 982.201 of this title. Additionally, for a family to be eligible for assistance in the specific unit, the unit must be appropriate for the size of the family under the PHA's subsidy standards and the total tenant payment for the family must be less than the gross rent for the unit, such that the unit will be eligible for a monthly HAP. The PHA must not enter into a HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

(d) *Prohibition against assistance for units for which commencement of construction or rehabilitation occurred in violation of program requirements.* Unless a PHA has exercised the discretion at § 983.154(f), to undertake development activity without an Agreement or to execute an Agreement after construction or rehabilitation that complied with applicable requirements of § 983.153 has commenced, or at § 983.157, to undertake development activity after execution of the HAP contract, the PHA may not execute a HAP contract for units on which construction or rehabilitation commenced after the date of proposal submission (for housing subject to competitive selection) or the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection) and prior to the effective date of an Agreement. At HUD's sole discretion, HUD may approve a PHA's request for an exception to this prohibition. In determining whether to approve the PHA request, HUD will consider appropriate factors, including the nature and extent of the construction or rehabilitation that has commenced.

(1) Units for which rehabilitation or new construction began after proposal submission or the date of board resolution but prior to the effective date of an Agreement (if applicable), as described in this paragraph (d), do not subsequently qualify as existing housing.

(2) Units that were newly constructed or rehabilitated in violation of program requirements do not qualify as existing housing.

**§ 983.53 Prohibition of assistance for units in subsidized housing.**

(a) *Types of subsidized housing prohibited from receiving PBV assistance.* A HAP contract must not be effective and no PBV assistance may be provided for any of the following:

(1) A public housing dwelling unit;

(2) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);

(3) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);

(4) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

(5) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service

Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);

(6) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);

(7) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);

(8) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);

(9) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (*e.g.,* a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*); or

(10) A unit with any other duplicative Federal, State, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, ''housing subsidy'' does not include the housing component of a welfare payment; a social security payment; or a Federal, State, or local tax concession (such as relief from local real property taxes).

(b) [RESERVED]

**§ 983.54 Cap on number of PBV units in each project (income-mixing requirement).**

(a) *Project cap.* Except as provided in paragraph (b) or (c) of this section, a PHA may not select a proposal to provide PBV assistance or enter into an Agreement or HAP contract if the number of assisted units in a project is more than the greater of 25 percent of the number of dwelling units (assisted and unassisted, as adjusted as provided in paragraph (c)(3)) in the project or 25 units.

(b) *Higher project cap.* A PHA may provide PBV assistance to the greater of 25 units or 40 percent of the number of dwelling units (assisted and unassisted, as adjusted as provided in paragraph (c)(3) of this section) in the project if the project is located in an area where vouchers are difficult to use as defined in § 983.3.

(c) *Exceptions to the project cap.* (1) A project is not limited to a single exception category but may include excepted units from any of the exception categories under paragraph (2) and excluded units under paragraph (3) below.

(2) PBV units are not counted toward the project cap in the following cases:

(i) Units exclusively serving elderly families, as defined in 24 CFR 5.403;

(ii) Units exclusively made available to eligible youth described in Section 8(x)(2)(B) of the U.S. Housing Act. If the units exclusively made available to eligible youth use Family Unification Program (FUP) assistance that is normally available for eligible families and youth, the PHA must determine that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth), maintain documentation to support this determination, and amend its Administrative Plan to include the limitation of these FUP PBV units to eligible youth; or

(iii) Units exclusively made available to households eligible for supportive services available to the residents of the project assisted with PBV assistance. The project must make supportive services available to all PBV-assisted families in the project, but the family may not be required to participate in the services as a condition of living in the excepted unit. Such supportive services need not be provided by the owner or on-site but must be reasonably available to the families receiving PBV assistance in the project and designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible. The supportive services must be made available to the family within a reasonable time as defined by the PHA, but not to exceed 120 calendar days from the family's request. The PHA must include in its Administrative Plan the types of services offered to families that will enable the units to qualify under the exception and the extent to which such services will be provided (*e.g.,* length of time services will be provided to a family, frequency of services, and depth of services), and the reasonable time by which such services must be made available to the family, not to exceed 120 calendar days. A PHA that manages an FSS program may offer FSS to meet the exception. The PHA may also make the supportive services used in connection with the FSS program available to non-FSS PBV families at the project.

(3) Units that are excluded under § 983.59 do not count toward the project cap. Such units are removed from the number of dwelling units for purposes of calculating the percentages under paragraphs (a) and (b) of this section.

(4)(i) The PBV HAP contract must specify, and the owner must set aside, the number of excepted units made available for occupancy by families who qualify for the exception.

(ii) For a unit to be considered excepted it must be occupied by a family who qualifies for the exception.

(d) *HAP contracts already in effect.* (1) In general, HAP contracts in effect prior to April 18, 2017, when the exception at paragraph (c)(2)(iii) of this section came into effect and a prior exception for disabled families was removed, or prior to December 27, 2020, when the exception at paragraph (c)(2)(ii) of this section came into effect, are governed by those HAP contracts' terms concerning the number and type of excepted units in a project. The owner must continue to designate the same number of contract units and assist the same number and type of excepted units as provided under the HAP contract during the remaining term of the HAP contract and any extension.

(2) The owner and the PHA may mutually agree to change the requirements for excepted units under the HAP contract to comply with the excepted unit requirements in subsection (c) of this section. However, any change to the HAP contract may only be made if the change does not jeopardize an assisted family's eligibility for continued assistance at the project.

(e) *PHA determination.* The PHA determines the number of units in the project for which the PHA will provide project-based assistance, including whether and how many units will be excepted, subject to the provisions of this section. See § 983.262 for occupancy requirements of excepted units.

(f) *HUD monitoring.* HUD may establish additional monitoring and oversight requirements for PBV projects in which more than 40 percent of the dwelling units are assisted under a PBV HAP contract through a **Federal Register** Notice, subject to public comment.

**§ 983.55 Site selection standards.**

(a) *Applicability.* The site selection requirements in paragraph (d) of this section apply only to site selection for existing housing and rehabilitated PBV housing. The site selection requirements in paragraph (e) of this section apply only to site selection for newly constructed PBV housing. Other provisions of this section apply to selection of a site for any form of PBV housing, including existing housing, newly constructed housing, and rehabilitated housing.

(b) *Compliance with PBV goals, civil rights requirements, and site and neighborhood standards.* The PHA may not select a project or proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

(1) Project-based assistance for housing at the selected site is consistent

with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR part 903 and the PHA Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, a PHA must consider the following:

(i) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

(ii) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;

(iii) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;

(iv) Whether State, local, or Federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;

(v) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;

(vi) If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, the PHA must consider whether in the past five years there has been an overall decline in the poverty rate;

(vii) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3629) and HUD's implementing regulations at 24 CFR parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959–1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107. The site must also be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12131–12134) and implementing regulations (28 CFR part 35), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8, including meeting the Section 504 site selection requirements described in 24 CFR 8.4(b)(5).

(3) The site and neighborhood is reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, that could affect the health or safety of the project occupants, such as dangerous walks or steps; contamination; 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.

(c) *PHA PBV site selection policy.* (1) The PHA Administrative Plan must establish the PHA's policy for selection of PBV sites in accordance with this section.

(2) The site selection policy must explain how the PHA's site selection procedures promote the PBV goals.

(3) The PHA must select PBV sites in accordance with the PHA's site selection policy in the PHA Administrative Plan.

(d) *Existing and rehabilitated housing site and neighborhood standards.* A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and 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) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(3) 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.

(4) 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.

(e) *New construction site and neighborhood standards.* A site for newly constructed housing must meet 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 must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) 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.

(3) A project may be located in an area of minority concentration only if:

(i) 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 paragraphs (e)(3)(iii) through (v) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e)(3)(vi) of this section for further guidance on this criterion).

(iii) As used in paragraph (e)(3)(i) of this section, ''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.

(iv) Units may be considered ''comparable opportunities,'' as used in paragraph (e)(3)(i) of this section, 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.

(v) 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:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) 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.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(E) 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.

(F) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(vi) 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 improving 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 that 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 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.

### § 983.56 Environmental review.

(a) *HUD environmental regulations.* (1) HUD environmental regulations at 24 CFR parts 50 and 58 apply to activities under the PBV program, except as provided in paragraph (a)(2) of this section.

(2) For projects or proposals that were selected in accordance with the site selection standards at § 983.55 in effect on or after June 6, 2024, no environmental review is required to be undertaken before entering into a HAP contract for existing housing, except to the extent a Federal environmental review is required by law or regulation relating to funding other than PBV housing assistance payments.

(b) *Who performs the environmental review?* Under 24 CFR part 58, the unit of general local government within which the project is located that exercises land use responsibility, the county, or the State (the ''responsible entity'' or ''RE''), is responsible for the Federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related applicable Federal laws and authorities in accordance with 24 CFR 58.5 and 58.6. If a PHA objects in writing to having the RE perform the Federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself (24 CFR 58.11). 24 CFR part 50 governs HUD performance of the review.

(c) *Notice of applicability.* When an environmental review is required, if such a review has not been conducted prior to the proposal or project selection date, then the PHA's written notice of proposal or project selection must state that the selection is subject to completion of a favorable environmental review and that the project may be rejected based on the results of the environmental review.

(d) *Environmental review limitations.* When an environmental review is required, a PHA may not execute an Agreement or HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for these activities, until one of the following occurs:

(1) The responsible entity has determined that the activities to be undertaken are exempt under 24 CFR 58.34(a) or categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b);

(2) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the PHA's Request for Release of Funds and Certification (form HUD–7015.15). HUD approves the Request for Release of Funds and Certification by issuing a Letter to Proceed or form HUD–7015.16, thereby authorizing the PHA to execute an Agreement or HAP contract, as applicable; or

(3) HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental clearance.

(e) *Environmental review restrictions.* HUD will not issue a Letter to Proceed or form HUD–7015.16 to the PHA or provide environmental clearance if the PHA, the owner, or its contractors have undertaken any of the activities described in paragraph (d) of this section.

(f) *Mitigating measures.* The PHA must document any mitigating measures or other conditions as provided in 24 CFR part 50 or 58, as applicable, and must complete or require the owner to carry out such measures and conditions.

(g) *PHA duty to supply information.* The PHA must supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform the required environmental review.

### § 983.57 PHA-owned units.

(a) *Selection of PHA-owned units.* The selection of PHA-owned units must be done in accordance with § 983.51(h).

(b) *Independent entity functions.* In connection with PHA-owned units:

(1) The independent entity must determine rent to owner, including rent reasonableness and calculating any rent

adjustments by an OCAF (where applicable), in accordance with §§ 983.301 through 983.305.

(2) The independent entity must perform unit inspections in accordance with § 983.103(g).

(3) When the owner carries out development activity under § 983.152 or substantial improvement under §§ 983.207(d) or 983.212, the independent entity must review the evidence and work completion certification submitted by the owner in accordance with § 983.155(b) and determine if the units are complete in accordance with § 983.156.

(4) The independent entity must determine whether to approve substantial improvement to units under a HAP contract in accordance with § 983.212.

(c) *Payment to independent entity.* The PHA may compensate the independent entity from PHA administrative fees (including fees credited to the administrative fee reserve) for the services performed by the independent entity. The PHA may not use other program receipts to compensate the independent entity for such services. The PHA and the independent entity may not charge the family any fee or charge for the services provided by the independent entity.

**§ 983.58 PHA determination prior to selection.**

(a) *Analysis of units and budget.* A PHA must calculate the number of authorized voucher units that it is permitted to project-base in accordance with § 983.6 and determine the amount of budget authority that it has available for project-basing in accordance with § 983.5(b), before it issues a request for proposals in accordance with § 983.51(b)(1), makes a selection based on a previous competition in accordance with § 983.51(b)(2), amends an existing HAP contract to add units in accordance with § 983.207(b), or noncompetitively selects a project in accordance with § 983.51(c).

(b) *Analysis of impact.* Prior to selecting a project for PBV assistance, a PHA must perform an analysis of the impact if project-basing 50 percent or more of the PHA's authorized voucher units. The analysis should consider the ability of the PHA to meet the needs of the community across its tenant-based and project-based voucher portfolio, including the impact on, among others: families on the waiting list and eligible PBV families that wish to move under § 983.261. The analysis performed by the PHA must be available as part of the public record.

**§ 983.59 Units excluded from program cap and project cap.**

(a) *General.* For HAP contracts entered into on or after April 18, 2017, the PHA may commit project-based assistance to units that meet the requirements for exclusion in paragraph (b) of this section. Such units do not count toward the program cap or project cap described in §§ 983.6 and 983.54, respectively.

(b) *Requirements for exclusion of existing or rehabilitated units.* Excluded units must, in the five years prior to the request for proposals (RFP) or the proposal or project selection date in the case of selection without RFP, fall into one of the following categories provided that the units are removed from all categories prior to the effective date of the HAP contract:

(1) The units have received one of the following forms of HUD assistance:

(i) Public Housing Capital or Operating Funds (Section 9 of the 1937 Act);

(ii) Project-Based Rental Assistance (Section 8 of the 1937 Act). Project-based rental assistance under Section 8 includes the Section 8 moderate rehabilitation program, including the single-room occupancy (SRO) program;

(iii) Housing For the Elderly (Section 202 of the Housing Act of 1959);

(iv) Housing for Persons with Disabilities (Section 811 of the Cranston-Gonzalez National Affordable Housing Act);

(v) Rental Assistance Program (RAP) (Section 236(f)(2) of the National Housing Act); or

(vi) Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments Act of 1978).

(2) The units have been subject to a federally required rent restriction under one of the following programs:

(i) The Low-Income Housing Tax Credit program (26 U.S.C. 42);

(ii) Section 515 Rural Rental Housing Loans (42 U.S.C. 1485); or

(iii) The following HUD programs:

(A) Section 236;

(B) Section 221(d)(3) Below Market Interest Rate;

(C) Housing For the Elderly (Section 202 of the Housing Act of 1959);

(D) Housing for Persons with Disabilities (Section 811 of the Cranston-Gonzalez National Affordable Housing Act);

(E) Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments Act of 1978); or

(iv) Any other program identified by HUD through **Federal Register** notice subject to public comment.

(c) *Replacement units.* Newly constructed units developed under the PBV program may be excluded from the program cap and project cap provided the primary purpose of the newly constructed units is or was to replace units that meet the criteria of paragraph (b)(1) or (2) of this section. The newly constructed unit must be located on the same site as the unit it is replacing; however, an expansion of or modification to the prior project's site boundaries as a result of the design of the newly constructed project is acceptable as long as a majority of the replacement units are built back on the site of the original project and any replacement units that are not located on the existing site are part of a project that shares a common border with, are across a public right of way from, or touch that site. In addition, in order for the replacement units to be excluded from the program and project caps, one of the following must be true:

(1) Former residents of the original project must be provided with a selection preference that provides the residents with the right of first occupancy at the PBV newly constructed project when it is ready for occupancy.

(2) Prior to the demolition of the original project, the PBV newly constructed project must have been identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

(d) *Unit size configuration and number of units for newly constructed and rehabilitated projects.* The unit size configuration of the PBV newly constructed or rehabilitated project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV-assisted units may differ from the number of units in the original project. However, only the total number of units in the original project are excluded from the program cap and the project cap. Units that exceed the total number of covered units in the original project are subject to the program cap and the project cap.

(e) *Inapplicability of other program and project cap exceptions.* The 10 percent exception under § 983.6 and the project cap exception under § 983.54(c)(2) are inapplicable to excluded units under this section.

**Subpart C—Dwelling Units**

■ 95. Amend § 983.101 by revising paragraphs (a) and (e) to read as follows:

**§ 983.101 Housing quality standards.**

(a) *HQS applicability.* As defined in § 983.3, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 of this title for housing assisted under the PBV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

* * * * *

(e) *Additional PHA quality and design requirements.* This section establishes the minimum federal housing quality standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing.

■ 96. Revise § 983.103 to read as follows:

**§ 983.103 Inspecting units.**

(a) *Pre-selection inspection.* If the units to be assisted already exist, the PHA must inspect all units before the proposal or project selection date and must determine if the project meets the definition of existing housing. If the project is existing housing, the PHA may not execute the HAP contract until all units meet the initial inspection requirements in accordance with paragraph (c) of this section.

(b) *Initial inspection of newly constructed and rehabilitated projects and units that underwent substantial improvement to be added to a HAP contract.* Following completion of work pursuant to § 983.155, the PHA must complete the following inspection(s), as applicable in accordance with § 983.156:

(1) For rehabilitated housing that is developed prior to the HAP contract term or newly constructed housing, the PHA must inspect each proposed newly constructed and rehabilitated PBV unit before execution of the HAP contract. Each proposed PBV unit must fully comply with HQS prior to HAP contract execution.

(2) For rehabilitated housing that will undergo development activity after HAP contract execution per § 983.157, the PHA must conduct unit inspections in accordance with the requirements of § 983.157.

(3) Inspect each unit that underwent substantial improvement pursuant to §§ 983.207(d) or 983.212. Each PBV unit that underwent substantial improvement must fully comply with HQS prior to the PHA adding the unit to the HAP contract, returning the unit temporarily removed to the HAP contract, allowing re-occupancy of the unit, and resuming housing assistance payments, as applicable.

(c) *Initial inspection requirements for existing housing*—(1) *In general.* In accordance with this paragraph, the PHA may adopt in its Administrative Plan the non-life-threatening deficiencies option or the alternative inspection option, or both, for initial inspections of existing housing. If the PHA has not adopted the initial inspection non-life-threatening deficiency option (NLT option) or the alternative inspection option for the project, the PHA must inspect and determine that all of the proposed PBV units fully comply with HQS before entering the HAP contract. The PHA must establish in its Administrative Plan the amount of time that may elapse between the initial inspection of existing housing and execution of a HAP contract for that unit.

(2) *Initial inspection—NLT option.* (i) A PHA may execute the HAP contract and begin making assistance payments for all of the assisted units, including units that failed the initial HQS inspection, provided that no units have life-threatening deficiencies and if the owner agrees to the NLT option. If the PHA has established and the unit is covered by both the NLT option and the alternative inspections option under paragraph (c)(3) of this section for the initial HQS inspection, see paragraph (c)(4) of this section.

(ii) After completing the inspections and determining there are no life-threatening deficiencies, for any unit with non-life-threatening deficiencies, the PHA must provide both the owner and the family (any eligible in-place family (§ 983.251(d)) or any family referred from the PBV waiting list being offered that unit) a list of the non-life-threatening deficiencies identified by the initial HQS inspection and an explanation of the maximum amount of time the PHA will withhold HAP before abating assistance if the owner does not complete the repairs within 30 days. The PHA must also inform the family that if the family accepts the unit and the owner fails to make the repairs within the cure period, which may not exceed 180 days from the effective date of the HAP contract, the PHA will remove the unit from the HAP contract, and the family will be issued a voucher to move to another unit in order to receive voucher assistance. If the PHA's Administrative Plan provides that the PHA will terminate the PBV HAP contract if the owner fails to correct deficiencies in any unit in the project within the cure period, the PHA must also provide the notice described above to families referred to units without any deficiencies. The family referred from the waiting list may choose to decline the unit and remain on the waiting list. An eligible in-place family may decline the unit, and the PHA must issue the family a tenant-based voucher to move from the unit in that circumstance.

(iii) If the family decides to lease the unit, the family enters into the assisted lease with the owner. The PHA commences making assistance payments to the owner.

(iv) The owner must correct the deficiencies within 30 days from the effective date of the HAP contract. If the owner fails to correct the deficiencies within the 30-day cure period, the PHA must withhold the housing assistance payments for the unit until the owner makes the repairs and the PHA verifies the correction. Once the deficiencies are corrected, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(v) The PHA must state in its Administrative Plan the maximum amount of time it will withhold payments before abating payments and the number of days after which the PHA will either terminate the PBV HAP contract or remove the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract. If the PHA terminates the PBV HAP contract or removes the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, the PHA must provide any affected family tenant-based assistance as provided in § 983.206(b).

(vi) The owner may not terminate the tenancy of a family because of the withholding or abatement of assistance payments. During any period the assistance is abated under the NLT option, the family may terminate the tenancy by notifying the owner and the PHA, and the PHA must provide the family tenant-based assistance. In the case of an in-place family, the family may also choose to terminate the tenancy during the withholding period following the 30-day cure period, and the PHA must offer the family either another assisted unit in the PBV project that fully complies with HQS or tenant-based assistance.

(3) *Initial inspection—alternative inspection option.* The PHA may adopt the alternative inspection option for initial inspections of existing housing, subject to the procedures and requirements specified in 24 CFR 982.406(b), (c), (d), and (g).

(i) After the PHA determines the project meets the definition of existing housing in accordance with paragraph (a) of this section, the PHA may execute the HAP contract for the project if the project has been inspected in the

previous 24 months using an alternative inspection that meets the requirements of 24 CFR 982.406, as opposed to re-inspecting the project to make sure all units fully comply with HQS before executing the HAP contract, if the owner agrees to the use of the alternative inspection option. If the PHA has established and the unit is covered by both the NLT option under paragraph (c)(2) of this section and the alternative inspection option for the initial HQS inspection, see paragraph (c)(4) of this section.

(ii) The PHA notifies all families (any eligible in-place family (§ 983.251(d)) or any family referred from the PBV waiting list being offered a contract unit) that will occupy a contract unit before the PHA conducts the HQS inspection that the alternative inspection option is in effect for the project. The PHA must provide each family with the PHA list of HQS deficiencies that are considered life-threatening as part of this notification. A family on the waiting list may decline to accept an offered unit due to unit conditions and retain its place on the PBV waiting list.

(iii) The PHA must conduct an HQS inspection within 30 days of the proposal or project selection date. If the family reports a deficiency to the PHA prior to the PHA's inspection, the PHA must inspect the unit within the time period required under paragraph (f) of this section or within 30 days of the effective date of the HAP contract, whichever time period ends first.

(iv) The PHA may not commence housing assistance payments to the owner until the PHA has inspected all the units under the HAP contract and determined they meet HQS.

(v) If the PHA inspection finds that any contract unit contains HQS deficiencies, the PHA may not make housing assistance payments to the owner until all the deficiencies have been corrected in all contract units. If a deficiency is life-threatening, the owner must correct the deficiency within 24 hours of notification from the PHA. For other deficiencies, the owner must correct the deficiency within 30 calendar days (or any PHA-approved extension) of notification from the PHA. If the owner corrects the deficiencies within the required cure period, the PHA makes the housing assistance payments retroactive to the effective date of the HAP contract or the PBV lease effective dates, whichever is later.

(vi) The PHA establishes in the Administrative Plan the maximum amount of time it will withhold payments if the owner does not correct the deficiencies within the required cure period before abating payments and the date by which the PHA will either remove the unit from the HAP contract or terminate the HAP contract for the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract. If the PHA terminates the PBV HAP contract or removes the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, the PHA must provide any affected family tenant-based assistance as provided in § 983.206(b) of this title.

(vii) If the owner fails to make the repairs within the applicable time periods, the PHA must abate the payments for the non-compliant units, while continuing to withhold payments for the HQS compliant units until all the units meet HQS or the unit removal or contract termination occurs. If the deficiencies are corrected, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(viii) The owner may not terminate the tenancy of a family because of the withholding or abatement of assistance payments. During the abatement period, a family may terminate the tenancy by notifying the owner, and the PHA must provide the family tenant-based assistance. If the PHA terminates the PBV HAP contract or removes the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, the PHA must provide any affected family tenant-based assistance as provided in § 983.206(b) of this title.

(4) *Initial inspection—use of both the NLT and alternative options.* The PHA may adopt both the NLT option and the alternative inspection option for initial inspections of existing housing, subject to the procedures and requirements specified in 24 CFR 982.406(b), (c), (d), and (g).

(i) If the owner agrees to both the NLT option and the alternative inspection option, then the PHA notifies all families (any eligible in-place family (§ 983.251(d)) or any family referred from the PBV waiting list that will occupy the unit before the PHA conducts the HQS inspection) that both the NLT option and the alternative inspection option will be used for the family's unit. As part of this notification, the PHA must provide the family with the PHA's list of HQS deficiencies that are considered life-threatening. A family on the waiting list may decline to move into a unit due to unit conditions and retain its place on the PBV waiting list. Following inspection (see paragraph (c)(4)(ii) of this section), the PHA must provide any family referred from the PBV waiting list that will occupy a unit with non-life-threatening deficiencies a list of the non-life-threatening deficiencies identified by the initial HQS inspection and an explanation of the maximum amount of time the PHA will withhold HAP before abating assistance if the owner does not complete the repairs within 30 days. The PHA must also inform the family that if the family accepts the unit and the owner fails to make the repairs within the cure period, which may not exceed 180 days from the effective date of the HAP contract, the PHA will remove the unit from the HAP contract, and the family will be issued a voucher to move to another unit in order to receive voucher assistance. The family referred from the waiting list may choose to decline the unit and remain on the PBV waiting list.

(ii) The PHA executes the HAP contract with the owner on the basis of the alternative inspection. The PHA must conduct an HQS inspection within 30 days after the proposal or project selection date. If the family reports a deficiency to the PHA during this interim period, the PHA must inspect the unit within the time period required under paragraph (f) of this section or within 30 days of the proposal or project selection date, whichever time period ends first.

(iii) The PHA may not make housing assistance payments to the owner until the PHA has inspected all the assisted units.

(iv) If none of the units have any life-threatening deficiencies, the PHA commences payments and makes retroactive payments to the effective date of the HAP contract or the PBV lease effective dates, whichever is later, for all the assisted units. For any unit that failed the PHA's HQS inspection but has no life-threatening deficiencies, the owner must correct the deficiencies within no more than 30 days from the effective date of the HAP contract. If the owner fails to correct the deficiencies within the 30-day cure period, the PHA must withhold the housing assistance payments for that unit until the owner makes the repairs and the PHA verifies the correction. Once the unit is in compliance with HQS, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(v) If any units have life-threatening deficiencies, the PHA may not commence making housing assistance payments to the owner for any units until all the HQS deficiencies (life-threatening and non-life-threatening) have been corrected. The PHA must not refer families from the PBV waiting list

to occupy units with life-threatening deficiencies. The owner must correct all life-threatening deficiencies within no more than 24 hours. For other deficiencies, the owner must correct the deficiency within no more than 30 calendar days (or any PHA-approved extension). If the owner corrects all of the deficiencies within the required cure period, the PHA must make the housing assistance payments retroactive to the effective date of the HAP contract or the PBV lease effective dates, whichever is later. If the owner fails to make the repairs within the applicable time periods, the PHA must abate the payments for the non-compliant units, while continuing to withhold payments for the HQS compliant units until all the units meet HQS or the unit removal or contract termination occurs. If the deficiencies are corrected, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(vi) The owner may not terminate the tenancy of the family because of the withholding or abatement of assistance payments. During the period the assistance is abated, a family may terminate the tenancy by notifying the owner, and the PHA must provide the family tenant-based assistance. If the PHA terminates the PBV HAP contract or removes the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, the PHA must provide any affected family with tenant-based assistance as provided in § 983.206(b) of this title. The PHA must establish in its Administrative Plan:

(A) The maximum amount of time it will withhold payments if the owner fails to correct the deficiencies within the required cure period before abating payments; and

(B) The number of days after which the PHA will terminate the HAP contract or remove the unit from the HAP contract for the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract.

(d) *Turnover inspections.* Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA must not provide assistance on behalf of a family for a unit that fails to comply fully with HQS.

(e) *Periodic inspections.* (1) At least biennially during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections pursuant to paragraph (d) of this section are not counted toward meeting this inspection requirement. Instead of biennially, a small rural PHA, as defined in § 902.101 of this title, must inspect the random sample of units in accordance with this paragraph at least once every three years. The PHA must establish in its Administrative Plan the frequency of periodic inspections. This requirement applies in the case of a HAP contract that is undergoing development activity after HAP contract execution per § 983.157; however, if the periodic inspection occurs during the period of development activity covered by the rider and fewer than 20 percent of contract units in each building are designated in the rider as available for occupancy, the PHA is only required to inspect the units in that building that are designated as available for occupancy.

(2) If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, then the PHA must reinspect 100 percent of the contract units in the building.

(3) A PHA may also use alternative inspections to meet the requirements for periodic inspections in this paragraph (e), subject to the procedures and requirements specified in 24 CFR 982.406(b), (c), (d), and (g).

(f) *Other inspections.* (1) *Interim inspections:* When a participant family or government official notifies the PHA of a potential deficiency, the following conditions apply:

(i) *Life-threatening.* If the reported deficiency is life-threatening, the PHA must, within 24 hours, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of PHA notification.

(ii) *Non-life-threatening.* If the reported deficiency is non-life-threatening, the PHA must, within 15 days, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of the notification from the PHA or within any PHA-approved extension.

(iii) *Extraordinary circumstances.* In the event of extraordinary circumstances, such as if a unit is within a presidentially declared disaster area, HUD may approve an exception of the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

(2) *Follow-up inspections:* The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, except where the PHA is using a verification method as described in paragraph (h) of this section, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of the HQS. (Family HQS obligations are specified in 24 CFR 982.404(b).)

(3) *Supervisory quality control inspections:* In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

(g) *Inspecting PHA-owned units.* (1) In the case of PHA-owned units, the inspections required under this section must be performed by an independent entity designated in accordance with § 983.57, rather than by the PHA.

(2) The independent entity must furnish a copy of each inspection report to the PHA.

(3) The PHA must take all necessary actions in response to inspection reports from the independent entity, including exercise of contractual remedies for violation of the HAP contract by the PHA owner.

(h) *Verification methods.* When a PHA must verify correction of a deficiency, the PHA may use verification methods other than another on-site inspection. The PHA may establish different verification methods for initial and subsequent inspections or for different HQS deficiencies, which must be detailed in its Administrative Plan. Upon either an inspection for initial occupancy or a reinspection, the PHA may accept photographic evidence or other reliable evidence from the owner to verify that a deficiency has been corrected.

(i) *Projects with government financing.* In the case of a PBV project financed under a Federal, State, or local housing program that is subject to an alternative inspection, the PHA may rely upon inspections conducted at least triennially to demonstrate compliance with the alternative inspection option under paragraph (c) of this section or the periodic inspection requirement of paragraph (e) of this section, in accordance with its policy established in the PHA Administrative Plan.

■ 97. In subpart D, revise § 983.151 through § 983.156 to read as follows:

## Subpart D—Requirements for Rehabilitated and Newly Constructed Units

Sec.

**§ 983.151 Applicability.**

This subpart applies to development activity, as defined in § 983.3, under the PBV program.

**§ 983.152 Nature of development activity.**

(a) *Purpose of development activity.* An owner may undertake development activity, as defined at § 983.3, for the purpose of:

(1) Placing a newly constructed or rehabilitated project under a HAP contract; or

(2) For a rehabilitated project that will undergo development activity after HAP contract execution, completing the requirements of the rider in accordance with § 983.157.

(b) *Development requirements.* Development activity must comply with the requirements of §§ 983.153 through 983.157.

**§ 983.153 Development requirements.**

(a) *Environmental review requirements.* The development activity must comply with any applicable environmental review requirements at § 983.56.

(b) *Subsidy layering review.* (1) The PHA may provide PBV assistance only in accordance with the HUD subsidy layering regulations (24 CFR 4.13) and other requirements. A subsidy layering review is required when an owner undertakes development activity and housing assistance payment subsidy under the PBV program is combined with other governmental housing assistance from Federal, State, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from Federal, State, or local agencies, including assistance such as tax concessions or tax credits.

(2) When a subsidy layering review is required, it must occur before a PHA attaches assistance to a project. Specifically, the PHA may not execute an Agreement or HAP contract with an owner until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

(3) A further subsidy layering review is not required if HUD's designee has conducted a review in accordance with HUD's PBV subsidy layering review guidelines and that review included a review of PBV assistance.

(4) The owner must disclose to the PHA any change to the information provided for purposes of the subsidy layering review, including the amount of assistance or number of units to be developed, that occurs after the subsidy layering review has been conducted and before all contract units are placed under the HAP contract, in accordance with HUD requirements. A subsidy layering review may be required to determine if such a change would result in excess public assistance to the project, as required by HUD through notification in the **Federal Register**.

(5) The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements, unless the owner discloses additional assistance in accordance with HUD requirements. A subsidy layering review is required for newly constructed or rehabilitated housing under a HAP contract that receives additional assistance, as described in § 983.11(d).

(6) Existing housing is exempt from subsidy layering requirements.

(c) *Labor standards.* (1) Labor standards as described in paragraphs (c)(2) of this section apply to development activity. When the PHA exercises its discretion at §§ 983.154(f) or 983.157(a) to allow the owner to conduct some or all development activity while the proposed PBV units are not under an Agreement or HAP contract, the applicable parties must comply with the labor standards in paragraph (c)(2) of this section from the date of proposal submission (for housing subject to competitive selection) or from the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection).

(2) In the case of development involving nine or more contract units (whether or not completed in stages):

(i) The owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing; and

(ii) The owner and the owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable Federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

(3) For any project to which labor standards apply, the PHA's written notice to the party that submitted the selected proposal or board resolution approving project-basing of assistance at the specific project, as applicable per § 983.51(f), must state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

(d) *Equal employment opportunity.* Development activity is subject to the Federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

(e) *Accessibility.* As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131–12134) and implementing regulations at 28 CFR part 35, including §§ 35.150 and 35.151, apply to development activity. A description of any required work item resulting from these requirements must be included in the Agreement (if applicable), as specified in § 983.154(e)(6) or HAP contract (if applicable), as specified in § 983.157(e)(1).

(f) *Broadband infrastructure.* (1) Any development activity that constitutes substantial rehabilitation as defined by 24 CFR 5.100 of a building with more than four rental units and where the proposal or project selection date or the start of the development activity while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(2) A description of any required work item resulting from this requirement must be included in the Agreement (if

applicable), as specified in § 983.154(e)(7) or HAP contract (if applicable), as specified in § 983.157(e)(2).

(g) *Eligibility to participate in Federal programs and activities.* (1) An owner or project principal who is on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs, or who is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, may not participate in development activity or the rehabilitation of units subject to a HAP contract. Both the Agreement (if applicable) and the HAP contract must include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on such list and are not debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

(2) An owner must disclose any possible conflict of interest that would be a violation of the Agreement (if applicable), the HAP contract, or HUD regulations, in accordance with § 982.161 of this title.

**§ 983.154 Development agreement.**

(a) *Agreement to enter into HAP contract (Agreement).* Except as specified in paragraphs (f) and (g) of this section, the PHA and owner must enter into an Agreement that will govern development activity. In the Agreement, the owner agrees to develop the contract units to comply with HQS, and the PHA agrees that, upon timely completion of such development activity in accordance with the terms of the Agreement, the PHA will enter into an initial HAP contract with the owner for the contract units. The Agreement must cover a single project, except one Agreement may cover multiple projects that each consist of a single-family building.

(b) *Timing of Agreement.* The effective date of the Agreement must be on or after the date the Agreement is executed. The Agreement must be executed and effective prior to the commencement of development activity as described in paragraph (d) of this section, except as provided in paragraphs (f) and (g) of this section, and must be in the form required by HUD (see 24 CFR 982.162(b)).

(c) *Agreement amendment.* The PHA and owner may agree to amend the contents of the Agreement described in paragraph (e) of this section by executing an addendum to the Agreement, so long as such amendments are consistent with all requirements of this part 983. The PHA and owner may only execute an addendum affecting a unit prior to the PHA accepting the completed unit.

(d) *Commencement of development activity.* Development activity must not commence after the date of proposal submission (for housing subject to competitive selection) or the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection) and before the effective date of the Agreement, except as provided in paragraphs (f) and (g) of this section.

(1) In the case of new construction, development activity begins with excavation or site preparation (including clearing of the land).

(2) In the case of rehabilitation, development activity begins with the physical commencement of rehabilitation activity on the housing.

(e) *Contents of Agreement.* At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program and development activity to be performed:

(1) The site;

(2) The location of contract units on site;

(3) The number of contract units by area (square footage) and number of bedrooms and bathrooms;

(4) The services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

(5) The utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;

(6) A description of any required work item necessary to comply with the accessibility requirements of § 983.153(e);

(7) A description of any required work item if the requirement at § 983.153(f) to install broadband infrastructure applies;

(8) Estimated initial rents to owner for the contract units;

(9) A description of the work to be performed under the Agreement:

(i) For rehabilitation, the work description must include the rehabilitation work write-up and, where determined necessary by the PHA, specifications and plans (see paragraph (g) of this section for additional requirements that apply under the option for development activity after HAP contract at 983.157); and

(ii) For new construction, the work description must include the working drawings and specifications;

(10) The deadline for completion of the work to be performed under the Agreement; and

(11) Any requirements the PHA elects to establish in addition to HQS for design, architecture, or quality. The PHA must specify the conditions under which it will require additional housing quality requirements in the Administrative Plan.

(f) *PHA discretion.* With respect to development activity, the PHA may decide not to use an Agreement or may choose to execute an Agreement after construction or rehabilitation that complied with applicable requirements of § 983.153 has commenced.

(1) In its Administrative Plan, the PHA must explain the circumstances (if any) under which the PHA will enter a PBV HAP contract for newly constructed or rehabilitated housing without first entering into an Agreement and under which the PHA will enter into an Agreement after construction or rehabilitation that complied with applicable requirements of § 983.153 has commenced.

(2) The following conditions apply:

(i) The owner of the project must be able to document its compliance with all applicable requirements of § 983.153 from the date of proposal submission (for housing subject to competitive selection) or from the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection);

(ii) For housing subject to competitive selection, the PHA must confirm prior to the proposal selection date that the owner has complied with all applicable requirements of § 983.153 from the date of proposal submission. For housing excepted from competitive selection, the PHA must confirm prior to executing the Agreement (if applicable) or HAP contract that the owner has complied with all applicable requirements of § 983.153 from the date of the PHA's board resolution approving the project-basing of assistance at the project; and

(iii) The PHA must comply with the notice requirement of § 983.153(c)(3).

**§ 983.155 Completion of work.**

(a) *General requirement.* The owner must submit evidence and certify to the PHA, in the form and manner required by the PHA's Administrative Plan, that development activity under § 983.152 or substantial improvement under §§ 983.207(d) or 983.212 has been completed, and that all such work was completed in accordance with the

applicable requirements. The PHA must review the evidence to determine whether the development activity or substantial improvement was completed in accordance with the applicable requirements.

(b) *PHA-owned units.* In the case of PHA-owned units, the owner must submit evidence and certify to the independent entity (see § 983.57(b)(3)), in the form and manner required by the PHA's Administrative Plan, that development activity under § 983.152 or substantial improvement under §§ 983.207(d) or 983.212 has been completed, and that all such work was completed in accordance with the applicable requirements. The independent entity must review the evidence to determine whether the development activity or substantial improvement was completed in accordance with the applicable requirements.

**§ 983.156 PHA acceptance of completed units.**

(a) *Inspection of units.* After the PHA has received all required evidence of completion and the owner's certification that all work was completed in accordance with the applicable requirements, the PHA must inspect the completed units to determine whether they comply with HUD's HQS (see § 983.103(b)) and any additional design, architecture, or quality requirements specified by the PHA.

(b) *Execution or amendment of the HAP contract.* If the PHA determines that the development activity or substantial improvement was completed in accordance with the applicable requirements at § 983.155 and the completed units meet HUD's HQS and any additional design, architecture, or quality requirements specified by the PHA per paragraph (a) of this section, then the PHA must:

(1) For units developed pursuant to § 983.152(a)(1) which will not undergo development activity after HAP contract execution per § 983.157, submit the HAP contract for execution by the owner and execute the HAP contract;

(2) For rehabilitated housing projects for which development activity has commenced prior to HAP contract execution, but which will undergo development activity after HAP contract execution under § 983.157(b), submit the HAP contract for execution by the owner and execute the HAP contract;

(3) For development activity conducted after HAP contract execution, amend the HAP contract rider to designate the completed units as available for occupancy (§ 983.157(f)(1)(ii)) or, if the owner has completed all development activity as provided in the rider, amend the HAP contract to terminate the rider (§ 983.157(d)); or

(4) For units that underwent substantial improvement in order to be added to the HAP contract, amend the HAP contract to add the units to the HAP contract (§ 983.207(d)).

(c) *Staged completion of contract units.* Contract units developed pursuant to § 983.152(a)(1) which will not undergo development activity after HAP contract execution per § 983.157 may be placed under the HAP contract in stages commencing on different dates. In such a case, the PHA must determine separately for each stage whether the development activity was completed in accordance with the applicable requirements per § 983.155 and that the units meet HUD's HQS and any additional design, architecture, or quality requirements specified by the PHA per paragraph (a) of this section. If the first stage is determined compliant, then the PHA must submit the HAP contract for execution by the owner and must execute the HAP contract for PBV rehabilitated housing and newly constructed housing projects. As each subsequent stage is determined compliant, the PHA and owner must amend the HAP contract to add the units to the HAP contract (see § 983.207(g)).

(d) *PHA-owned units.* The independent entity must perform the inspection required in paragraph (a) of this section and make the determination(s) required in paragraphs (b) and (c) of this section in the case of PHA-owned units (see § 983.57(b)(3)).

■ 98. Delayed indefinitely, amend § 983.154 by adding paragraphs (g) and (h) to read as follows:

**§ 983.154 Development agreement.**

* * * * *

(g) *Rehabilitated housing option: development activity during HAP contract term.* The PHA may permit some or all development activity to occur during the term of the HAP contract under the rehabilitated housing option in § 983.157. Under this option, the PHA may choose to execute an Agreement for any development activity undertaken before the HAP contract is effect. If the PHA will execute an Agreement for development activity undertaken before the HAP contract is effective, the work description required per paragraph (e)(9)(i) of this section must specify the work activities that will be performed during the term of the Agreement.

(h) *PHA-owned units.* For PBV projects containing PHA-owned units that are not owned by a separate legal entity from the PHA (*e.g.,* an entity wholly controlled by the PHA or a limited liability company or limited partnership owned by the PHA), the PHA must choose one of the following options if it does not exercise its discretion at paragraphs (f) or (g) of this section not to use an Agreement:

(1) Prior to execution of the Agreement, the PHA must establish a separate legal entity to serve as the owner. That separate legal entity must execute the Agreement with the PHA. The separate legal entity must have the legal capacity to lease units and must be one of the following:

(i) A non-profit affiliate or instrumentality of the PHA;

(ii) A limited liability corporation;

(iii) A limited partnership;

(iv) A corporation; or

(v) Any other legally acceptable entity recognized under State law.

(2) The PHA signs the HUD-prescribed PHA-owned agreement certification covering a PHA-owned unit, instead of executing the Agreement for the PHA-owned unit. By signing the PHA-owned agreement certification, the PHA certifies that it will fulfill all the required program responsibilities of the private owner under the Agreement, and that it will also fulfill all of the program responsibilities required of the PHA for the PHA-owned unit.

(i) The PHA-owned agreement certification serves as the equivalent of the Agreement, and subjects the PHA, as owner, to all of the requirements of the Agreement contained in parts 982 and 983. Where the PHA has elected to use the PHA-owned agreement certification, all references to the Agreement throughout parts 982 and 983 must be interpreted to be references to the PHA-owned agreement certification.

(ii) The PHA may not use the PHA-owned agreement certification if the PHA-owned PBV project is owned by a separate legal entity from the PHA (*e.g.,* an entity wholly controlled by the PHA or a limited liability corporation or limited partnership controlled by the PHA).

■ 99. Delayed indefinitely, add § 983.157 to read as follows:

**§ 983.157 Rehabilitated housing: option for development activity after HAP contract execution.**

(a) *PHA discretion.* (1) The PHA may allow an owner of a rehabilitated housing project to conduct some or all of the development activity during the term of the HAP contract, as provided in this section. Under this option, the PHA and owner place all proposed PBV units under the HAP contract at the time

provided in paragraph (c) of this section and before the owner completes development activity. During the period of development activity, the PHA makes assistance payments to the owner for the contract units that are occupied and meet HQS.

(2) In its Administrative Plan, the PHA must explain the circumstances (if any) under which the PHA will enter a PBV HAP contract for rehabilitated housing that allows for development activity on contract units. The Administrative Plan may provide for execution of HAP contracts in accordance with this section prior to commencement of development activity, following commencement of development activity, or both. When the PHA uses the competitive selection method at § 983.51(b)(1), the PHA's policy must be disclosed in the request for proposals.

(b) *Projects that have commenced rehabilitation.* If the PHA allows for execution of a HAP contract following commencement of development activity, the following requirements apply to the development activity that occurs before HAP contract execution:

(1) For rehabilitation undertaken under an Agreement, the development activity must have complied with the Agreement executed pursuant to § 983.154, including completion of any work items and completion and acceptance of any units which were to be completed under the Agreement under §§ 983.155 and 983.156; or

(2) For rehabilitation undertaken without an Agreement pursuant to § 983.154(f):

(i) The owner of the project must be able to document its compliance with all applicable requirements of § 983.153 from the date of proposal submission (for housing subject to competitive selection) or from the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection); and

(ii) For housing subject to competitive selection, the PHA must confirm prior to the proposal selection date that the owner has complied with all applicable requirements of § 983.153 from the date of proposal submission. For housing excepted from competitive selection, the PHA must confirm prior to executing the HAP contract that the owner has complied with all applicable requirements of § 983.153 from the date of the PHA's board resolution approving the project-basing of assistance at the project.

(c) *Timing of HAP contract execution.* The PHA may execute the HAP contract for a project covered by this section after all of the following have occurred:

(1) The applicable requirement of § 983.56(d) (environmental review) has been met;

(2) If applicable, the subsidy layering review has been completed, in accordance with § 983.153(b)(2);

(3) If applicable, the PHA has determined that development activity that has commenced met the requirements of paragraph (b) of this section;

(4) The PHA has conducted an inspection (see § 983.103(b)(2)) of all units that the owner proposes to make available for occupancy by an assisted family at the beginning of the HAP contract term and the PHA has determined that at least one of those proposed contract units, including items and components within the primary and secondary means of egress, common features, and systems equipment as described by 24 CFR 5.703(a)(2), fully complies with HQS. The PHA may make the determination of compliance with HQS regardless of whether the HQS-compliant unit is expected to undergo rehabilitation. The owner may make repairs to correct HQS deficiencies identified during the PHA inspection as part of the development activity that occurs prior to HAP contract execution (see paragraph (b) of this section) to make the unit available for occupancy at the beginning of the HAP contract term. The PHA must establish in its Administrative Plan the amount of time that may elapse between the inspection and the execution of the HAP contract; and

(5) Occupants (if any) of proposed PBV units that were not inspected pursuant to paragraph (c)(4) of this section or that do not fully comply with HQS have moved and such units are vacant. These units must be identified as unavailable for occupancy in accordance with paragraph (e)(5)(ii) of this section. Any inspected unit that does not fully comply with HQS must undergo development activity, followed by inspection under § 983.156(a), prior to being designated for occupancy under paragraph (f)(1)(ii) of this section.

(6) Occupants (if any) who do not accept PBV assistance have moved and such units are vacant.

(7) The PHA may decline to place proposed PBV units that do not meet the criteria in paragraphs (c)(5) or (6) of this section on the HAP contract in order to execute the HAP contract before the units have been vacated. The PHA may add the units to the HAP contract once the units are vacant in accordance with § 983.207, except that the inspection requirement of § 983.207 does not apply if the unit will initially be categorized as unavailable for occupancy as provided in paragraph (e)(5)(ii) of this section.

(d) *HAP contract requirements.* The PHA and owner must execute the HAP contract (see § 983.204(c)) with a rider to the HAP contract that will govern development activity occurring during the term of the HAP contract. The contents of the HAP contract apply and are supplemented by the additional terms and conditions provided in the rider during the period the rider is in effect. When executing the HAP contract and rider, the PHA and owner complete the information in the HAP contract as provided in § 983.203 in addition to the information in the rider as provided in paragraph (e) of this section. The rider must be in the form required by HUD (see 24 CFR 982.162(b)). In the rider, the owner agrees to develop the contract units to comply with HQS, and the PHA agrees that, upon timely completion of such development activity in accordance with the terms of the rider, the rider will terminate and the HAP contract will remain in effect. The PHA determination that development activity has been completed and the rider may be terminated is made when all work has been completed in accordance with the applicable requirements at § 983.155 and all contract units fully comply with HQS, as provided in § 983.156(b)(3).

(e) *Contents of HAP contract rider.* At a minimum, the rider must describe the following features of the housing to be rehabilitated and assisted under the PBV program and development activity to be performed:

(1) A description of any required work item necessary to comply with the accessibility requirements of § 983.153(e);

(2) A description of any required work item if the requirement at § 983.153(f) to install broadband infrastructure applies;

(3) A description of the work to be performed under the rider, including the rehabilitation work write-up and, where determined necessary by the PHA, specifications and plans;

(4) Any requirements the PHA elects to establish in addition to HQS for design, architecture, or quality. The PHA must specify the conditions under which it will require additional housing quality requirements in the Administrative Plan.

(5) The development status of each specific contract unit. Specifically:

(i) The rider must list each unit that is available for occupancy by an assisted family at the time the unit is placed on the HAP contract. Each contract unit that fully complies with HQS in accordance with the PHA determination

under paragraph (c)(4) of this section and that the owner will make available for occupancy by an assisted family must be initially categorized as available for occupancy. For each unit that is available for occupancy, the rider must specify whether the owner will undertake development activity in the unit after it is occupied by an assisted family. The owner may initiate the development activity in the unit while it is occupied, subject to paragraph (g)(6) of this section, or when it becomes vacant, which may change the status of the unit for purposes of this paragraph. The owner must promptly notify the PHA of any change in the status of each unit throughout the period of development activity, in the form and manner required by the PHA's Administrative Plan;

(ii) The rider must list each unit that is unavailable for occupancy at the time the unit is placed on the HAP contract. Each contract unit that has not been inspected in accordance with paragraph (c)(4) of this section or that has been inspected and did not fully comply with HQS must be initially categorized as unavailable for occupancy. The owner must promptly notify the PHA of any change in the status of each unit throughout the period of development activity, in the form and manner required by the PHA's Administrative Plan; and

(6) The deadline for completion of the work to be performed under the rider, which must be no more than five years from the date the HAP contract is effective (the five-year maximum includes any extensions granted by the PHA).

(f) *Contract and rider amendment.* In general, the PHA and owner may agree to amend the contents of the rider described in paragraph (e) of this section by executing an addendum to the rider, so long as such amendments are consistent with all requirements of this part 983. However, the following requirements apply:

(1) In the case of additions or substitutions of units, the provisions of § 983.207 apply, except:

(i) The PHA and owner must also amend the rider to update the information described in paragraph (e)(5) of this section;

(ii) The units to be added must not undergo repairs or renovation prior to amending the PBV HAP contract to add the unit; and

(iii) Addition of a unit is prohibited while the rider is in effect if such addition will increase the number of contract units from eight or fewer units to nine or more units.

(2) The PHA and owner may only execute an addendum amending the items in paragraphs (e)(1)–(4) of this section affecting a unit prior to the PHA accepting the completed unit.

(g) *Occupancy of units during rehabilitation period.* The following requirements apply with respect to contract units that are available for occupancy at the time that the HAP contract is executed and during the period of development activity covered by the rider in accordance with paragraph (d) of this section:

(1) The PHA must select families as provided in § 983.251 for PBV assistance in a contract unit that is available for occupancy. Upon PHA acceptance of a completed unit (see § 983.156(b)(3)) that is vacant, the PHA may either select a family from the waiting list for PBV assistance in the newly completed unit or offer to transfer a family assisted in a different contract unit to the newly completed unit as described in paragraph (g)(6)(iii) of this section.

(2) The PHA may refer a family for occupancy of a contract unit only if the unit fully complies with HQS as determined by the PHA inspection.

(3) The PHA must provide a notice to the family upon selection explaining:

(i) The expected nature and duration of the development activity at the project;

(ii) That if the family accepts the unit and the owner fails to complete the development activity in accordance with applicable requirements, the PHA may terminate the HAP contract, in which case the family will be issued a tenant-based voucher and may be able to remain in the project with tenant-based assistance (see § 983.206(b));

(iii) If development activity is expected to occur in the family's unit per paragraph (e)(5) of this section, that the family may be required to vacate the unit temporarily or with continued voucher assistance;

(iv) That the family may choose to decline the unit and remain on the waiting list; and

(v) If applicable, in the case of an eligible in-place family, that the family may choose not to accept PBV assistance in the unit.

(4) The PHA must conduct periodic and other inspections on occupied contract units in accordance with the requirements of § 983.103(e) and (f) and must vigorously enforce the owner's obligation to maintain contract units occupied by an assisted family in accordance with the requirements of § 983.208.

(5) The PHA makes payments to the owner for occupied units as provided in § 983.351.

(6) When an owner will undertake development activity in a unit currently occupied by an assisted family as provided in paragraph (e)(5) of this section, the requirements of this paragraph (g)(6) govern where the family will live during the rehabilitation. For purposes of this paragraph, all references to the HQS applicable to the unit include items and components within the primary and secondary means of egress, common features, and systems equipment as described by 24 CFR 5.703(a)(2).

(i) The owner must complete the development activity without the family vacating the unit if the PHA reasonably expects that the owner can complete the development activity in a manner that:

(A) Does not result in life-threatening deficiencies;

(B) Does not result in any other deficiencies under the HQS that are not corrected within 30 days; and

(C) Is mutually agreeable to the owner and the family;

(ii) If the conditions for in-place development activity in paragraph (g)(6)(i) of this section cannot be achieved, the owner must temporarily relocate the family to complete the development activity if:

(A) The PHA reasonably expects that the owner can complete the relocation and development activity within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month); and

(B) The family can be relocated to a location and in a manner mutually agreeable to the owner and the family; and

(iii) If the conditions for in-place development activity in paragraph (g)(6)(i) of this section and temporary relocation in paragraph (g)(6)(ii) of this section cannot be achieved, the following protocol for lease termination and relocation applies:

(A) If there are contract units within the project that are designated as available for occupancy and that are vacant or expected to become vacant at the time of the planned lease termination, the PHA must refer the family to the owner for occupancy of an appropriate-size contract unit. If the family accepts the offered unit, the owner must provide the family with a reasonable time to move to the offered unit, must pay the family's reasonable moving expenses, must execute a lease with the family for the offered unit to be effective at the time of the family's move, and must terminate the lease for

the family's original unit at the time of the family's move. The owner must terminate the family's lease if the family rejects the offered unit; however, the PHA must first offer the family a different unit or tenant-based assistance under paragraph (g)(6)(iii)(B) of this section if needed as a reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities. The PHA must consider other family requests for a different unit or tenant-based assistance under paragraph (g)(6)(iii)(B) of this section;

(B) If no other contract unit within the project is available for the family to lease during the period of development activity, the PHA must issue the family a tenant-based voucher. However, the PHA is not required to issue the family a voucher if the PHA has offered the family an alternative housing option (*e.g.,* an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher. The PHA may also issue the family a tenant-based voucher to accommodate the family's need or request as provided in paragraph (g)(6)(iii)(A) of this section. The PHA must issue the voucher no fewer than 90 calendar days prior to the planned lease termination. If the family is eligible and willing to request a voucher to move in accordance with § 983.261, the PHA must issue the family the voucher to move under that section. If the family is not eligible or is unwilling to request a voucher to move under § 983.261, the PHA must remove the family's unit from the PBV HAP contract and issue the family its voucher to move with tenant-based assistance and subsequently add a unit back to the PBV HAP contract at the earlier of the time that the PHA has an authorized voucher unit available or the time that the unit is ready for occupancy. The PHA must extend the voucher term until the family either leases a unit with the tenant-based voucher or accepts a contract unit, whichever occurs first;

(C) If the family moves from the project in order for the owner to undertake development activity in the family's unit, the PHA must offer the family the option to return to the project with PBV assistance, if the family is eligible for PBV assistance, following completion of development activity at the project. The PHA, or owner in the case of an owner-maintained waiting list, must place the family on the PBV waiting list with an absolute selection preference for occupancy in the project; and

(D) If the family moves from the project in order for the owner to undertake development activity in the family's unit, the PHA must not refer any family for occupancy of the unit until after rehabilitation of the unit and PHA acceptance of the completed unit (see § 983.156(b)(3)).

(h) *Owner breach.* The owner's failure to complete the development activity as provided in the rider is a breach of the HAP contract and may result in the termination of the HAP contract, in accordance with the following requirements:

(1) If the owner has not completed the development activity by the deadline specified in the rider, which includes any extensions granted by the PHA, (see paragraph (e)(6) of this section), the PHA may grant an additional period for compliance to allow the owner more time to complete the development activity. The granting of any such period must be consistent with the PHA's Administrative Plan and must not exceed 180 days. If the owner has not completed the development activity following the period for compliance, the PHA must terminate the contract. In addition to termination, the PHA may exercise any of its other rights or remedies under the HAP contract. At HUD's sole discretion, HUD may approve a PHA's request for an extension of the period for compliance beyond 180 days. In determining whether to approve the PHA request, HUD will consider appropriate factors, including any extenuating circumstances that contributed to the delay.

(2) The owner's failure to comply with the development requirements of § 983.153 constitutes a breach of the HAP contract (see § 983.206(c)(2)). In the event that the owner's failure constituted only a de minimis error in the owner's compliance with the development requirements of § 983.153, the PHA may decide to take an action other than termination of the HAP contract. In all other cases, the PHA must terminate the HAP contract, in addition to any other rights and remedies the PHA chooses to exercise under the HAP contract.

(i) *PHA-owned units.* For PHA-owned units, the independent entity must perform the inspections required under paragraphs (b)(1) and (g) of this section and make the determinations in paragraphs (g)(6)(i) and (g)(6)(ii)(A) when the owner will undertake development activity in a unit currently occupied by an assisted family, as applicable.

## Subpart E—Housing Assistance Payments Contract

■ 100. Amend § 983.202 by revising paragraph (a) to read as follows:

### § 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. Except as provided in this paragraph, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. However, a PHA and owner may agree to place multiple projects, each consisting of a single-family building, under one HAP contract. The HAP contract must be in such form as may be prescribed by HUD.

* * * * *

■ 101. Amend § 983.203 by:
■ a. Revising paragraphs (f) and (h);
■ b. In paragraph (i), removing the period and adding, in its place, adding ''; and''; and
■ b. Adding paragraph (j).

The revisions and addition read as follows:

### § 983.203 HAP contract information.

* * * * *

(f) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, the Fair Housing Act, and the Americans with Disabilities Act, as applicable;

* * * * *

(h) The number of contract units under the increased program cap (as described in § 983.6(d)) or excepted from the project cap (as described in § 983.54(c)) which will be set aside for occupancy by families who qualify for such a unit;

* * * * *

(j) Whether the PHA has elected not to reduce rents below the initial rent to owner in accordance with 24 CFR 983.302(c)(2).

■ 102. Revise § 983.204 to read as follows:

### § 983.204 Execution of HAP Contract or PHA-owned Certification.

(a) *PHA inspection of housing.* Before execution of the HAP contract, the PHA must determine that applicable pre-HAP contract HQS requirements have been met in accordance with § 983.103(b) or (c) as applicable. The PHA may not execute the HAP contract for any contract unit that does not meet the pre-HAP contract HQS requirements, except as provided in paragraph (c).

(b) *Existing housing.* For existing housing, the HAP contract must be

executed and effective promptly after PHA selection of the owner proposal and PHA determination that the applicable pre-HAP contract HQS requirements have been met.

(c) *Newly constructed or rehabilitated housing.* For newly constructed or rehabilitated housing developed pursuant to § 983.152(a)(1) which will not undergo development activity after HAP contract execution per § 983.157, the HAP contract must be executed and effective promptly after the PHA determines that the housing was completed in accordance with the applicable requirements, HUD's HQS, and any additional design, architecture, or quality requirements specified by the PHA, in accordance with § 983.156(b)(1) or (c). For rehabilitated housing that will undergo development activity after HAP contract execution per § 983.157, the HAP contract must be executed and effective promptly after the requirements of § 983.157(c) are met (all proposed PBV units are added to the contract at this time, including units that do not comply with HQS or that will undergo development activity).

(d) *Effective date of the PBV HAP contract.* The effective date of the HAP contract must be on or after the date the HAP contract is executed. The HAP contract must be effective before the effective date of the first lease covering a contract unit occupied by an assisted family, and the PHA may not pay any housing assistance payment to the owner until the HAP contract is effective.

■ 103. Delayed indefinitely, amend § 983.204 by adding paragraph (e) to read as follows:

**§ 983.204 Execution of HAP Contract or PHA-owned Certification.**

* * * * *

(e) *PHA-owned units.* For PBV projects containing PHA-owned units that are not owned by a separate legal entity from the PHA (*e.g.,* an entity wholly controlled by the PHA or a limited liability company or limited partnership owned by the PHA), the PHA must choose one of the following options:

(1) Prior to execution of the HAP contract, the PHA must establish a separate legal entity to serve as the owner. That separate legal entity must execute the HAP contract with the PHA. The separate legal entity must have the legal capacity to lease units and must be one of the following:

(i) A non-profit affiliate or instrumentality of the PHA;

(ii) A limited liability corporation;

(iii) A limited partnership;

(iv) A corporation; or

(v) Any other legally acceptable entity recognized under State law.

(2) The PHA signs the HUD-prescribed PHA-owned certification covering a PHA-owned unit instead of executing the HAP contract for the PHA-owned unit. By signing the PHA-owned certification, the PHA certifies that it will fulfill all the required program responsibilities of the private owner under the PBV HAP contract, and that it will also fulfill all of the program responsibilities required of the PHA for the PHA-owned unit.

(i) The PHA-owned certification serves as the equivalent of the HAP contract, and subjects the PHA, as owner, to all of the requirements of the HAP contract contained in parts 982 and 983. Where the PHA has elected to use the PHA-owned certification, all references to the HAP contract throughout parts 982 and 983 must be interpreted to be references to the PHA-owned certification.

(ii) The PHA must obtain the services of an independent entity to perform the required PHA functions identified in § 983.57(b) before signing the PHA-owned certification.

(iii) The PHA may not use the PHA-owned certification if the PHA-owned PBV project is owned by a separate legal entity from the PHA (*e.g.,* an entity wholly controlled by the PHA or a limited liability corporation or limited partnership controlled by the PHA).

■ 104. Revise § 983.205 to read as follows:

**§ 983.205 Term of HAP contract.**

(a) *Initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years.

(b) *Extension of term.* The PHA and owner may agree at any time before expiration of the HAP contract to execute one or more extensions of the HAP contract term. The following conditions apply:

(1) Each extension executed must have a term that does not exceed 20 years;

(2) At no time may the total remaining term of the HAP contract, with extensions, exceed 40 years;

(3) Before agreeing to an extension, the PHA must determine that the extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities; and

(4) Each extension must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

■ 105. Revise § 983.206 to read as follows:

**§ 983.206 Contract termination or expiration and statutory notice requirements.**

(a) *Nonextension by owner—notice requirements.* (1) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(2) Not less than one year before termination of a PBV HAP contract, the owner must notify the PHA and assisted tenants of the termination.

(3) The term ''termination'' for applicability of this notice requirement means the expiration of the HAP contract, termination of the HAP contract by agreement of PHA and owner per paragraph (e) of this section, or an owner's refusal to renew the HAP contract.

(4) If an owner fails to provide the required notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent.

(5) An owner and PHA may agree to extend the terminating contract for a period of time sufficient to provide tenants with the required notice, under such terms as HUD may require.

(b) *Termination or expiration without extension—required provision of tenant-based assistance.* Unless a termination or expiration without extension occurs due to a determination of insufficient funding pursuant to paragraph (c)(1) of this section or other extraordinary circumstances determined by HUD, the PHA shall issue each family occupying a contract unit a tenant-based voucher based on the termination or expiration of the contract no fewer than 60 calendar days prior to the planned termination or expiration of the PBV HAP contract. However, the PHA is not required to issue the family a voucher if the PHA has offered the family an alternative housing option (*e.g.,* an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher. Such a family is not a new admission to the tenant-based program and shall not count toward the PHA's income-targeting requirements at 24 CFR 982.201(b)(2)(i). The voucher issued to the family is the voucher attached to its unit under the expiring or terminating PBV contract. Consequently, if the family vacates the

contract unit following the issuance of the tenant-based voucher and prior to the contract termination or expiration date, the PHA must remove the unit from the PBV HAP contract at the time the family vacates the unit. The PBV HAP contract must provide that, if the units continue to be used for rental housing upon termination or expiration without extension of a PBV HAP contract, each assisted family may elect to use its tenant-based assistance to remain in the same project, subject to the following:

(1) The unit must comply with HUD's HQS;

(2) The PHA must determine or have determined that the rent for the unit is reasonable;

(3) The family must pay its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-based utilities) exceeds the applicable payment standard (the limitation at 24 CFR 982.508 regarding maximum family share at initial occupancy shall not apply); and

(4) The owner may not refuse to initially lease a unit in the project to a family that elects to use their tenant-based assistance to remain in the same project, except where the owner will use the unit for a purpose other than a residential rental unit. The owner may not later terminate the tenancy of such a family, except for the following grounds:

(i) The grounds in 24 CFR 982.310 of this title, except paragraphs 24 CFR 982.310(d)(1)(iii) and (iv);

(ii) The owner's desire to use the unit for a purpose other than a residential rental unit; and

(iii) The owner's desire to renovate the unit, subject to the following:

(A) The owner must consider whether a reasonable alternative to terminating the lease exists. If a reasonable alternative exists, the owner must not terminate the lease. The owner must consider the following alternatives:

(*1*) Completing renovations without the family vacating the unit, if the renovations can be completed in a manner that does not result in life-threatening conditions, does not result in deficiencies under HQS that are not corrected within 30 days, and is mutually agreeable to the owner and the family; and

(*2*) Temporarily relocating the family to complete the renovations, if the relocation and renovations can be completed within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month) and the family can be relocated to a location and in a manner mutually agreeable to the owner and the family;

(B) If the owner terminates the lease for renovation, the owner must make every reasonable effort to make available and lease the family another unit within the project that meets the tenant-based voucher program requirements; and

(C) If no other unit within the project is available for the family to lease during the renovation period or the family chooses to move from the project during the renovation period, the owner must make every reasonable effort to make available and lease the family a unit within the project upon completion of renovations.

(c) *Termination by PHA.* (1) The HAP contract must provide that the PHA may terminate the contract for insufficient funding, subject to HUD requirements.

(i) Consistent with the policies in the PHA's Administrative Plan, the PHA has the option of terminating a PBV HAP contract based on ''insufficient funding'' only if:

(A) The PHA determines in accordance with HUD requirements that it lacks sufficient HAP funding (including HAP reserves) to continue to make housing assistance payments for all voucher units currently under a HAP contract;

(B) The PHA has taken cost-saving measures specified by HUD;

(C) The PHA notifies HUD of its determination and provides the information required by HUD; and

(D) HUD determines that the PHA lacks sufficient funding and notifies the PHA it may terminate HAP contracts as a result.

(2) If the PHA determines that the owner has breached the HAP contract, the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination. The provisions of § 983.208 apply for HAP contract breaches involving failure to comply with HQS. For any other contract termination due to breach, paragraph (b) of this section on provision of tenant-based assistance applies.

(d) *Termination by owner—reduction below initial rent.* If the amount of the rent to owner for any contract unit, as adjusted in accordance with § 983.302, is reduced below the amount of the initial rent to owner, the owner may terminate the HAP contract, upon notice to the PHA no fewer than 90 calendar days prior to the planned termination, and families must be provided tenant-based assistance and may elect to remain in the project in accordance with paragraph (b) of this section. The owner is not required to provide the one-year notice of the termination of the HAP contract to the family and the PHA, as described in paragraph (a) of this section, when terminating the HAP contract due to rent reduction below the initial rent to owner.

(e) *Termination by agreement of PHA and owner.* The PHA and owner may agree to terminate the HAP contract prior to the end of the term. The owner's notice in paragraph (a) of this section is required prior to termination, and the families must be provided tenant-based assistance and may elect to remain in the project in accordance with paragraph (b) of this section.

■ 106. Revise § 983.207 to read as follows:

**§ 983.207 HAP contract amendments (to add or substitute contract units).**

(a) *Amendment to substitute contract units.* At the discretion of the PHA, the PHA and owner may execute an amendment to the HAP contract to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit (the unit must comply with HQS to be substituted) and must determine the reasonable rent for such unit (the rent to owner must be reasonable for the unit to be substituted). The proposed substituted unit may be vacant or, subject to the requirements of paragraph (c) of this section, it may be occupied. The proposed substituted unit may undergo repairs or renovation prior to amending the PBV HAP contract to substitute the unit, as provided in paragraph (d) of this section. The proposed substituted unit must have existed at the time described in paragraph (e) of this section.

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed the limitations in § 983.6 or § 983.54, the PHA and owner may execute an amendment to the HAP contract to add PBV units in the same project to the contract, without a new proposal selection. Prior to such addition, the PHA must inspect the proposed added unit (the unit must comply with HQS to be added) and must determine the reasonable rent for such unit (the rent to owner must be reasonable for the unit to be added).

(1) Added units that qualify for an exclusion from the program cap (as described in § 983.59) or an exception to or exclusion from the project cap (as described in § 983.54(c) and § 983.59, respectively) will not count toward such cap(s).

(2) The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

(3) The added unit may be vacant or, subject to the requirements of paragraph (c) of this section, it may be occupied.

(4) The unit may undergo repairs or renovation prior to amending the PBV HAP contract to add the unit, as provided in paragraph (d) of this section.

(5) The added unit must have existed at the time described in paragraph (e) of this section.

(c) *Substituting or adding occupied units.* The PHA may place occupied units on the HAP contract under paragraphs (a) or (b) of this section, subject to the following:

(1) The family occupying the unit must be eligible for assistance per §§ 983.53(a)(3) and 983.251(a);

(2) The unit must be appropriate for the size of the family occupying the unit under the PHA's subsidy standards;

(3) The family must be selected from the waiting list in accordance with the applicable selection policies; and

(4) The unit may be occupied by a family who was assisted with a tenant-based voucher immediately prior to the unit being placed on the PBV HAP contract. The tenant-based HAP contract for the unit must terminate before the unit may be placed under the PBV HAP contract. The family occupying the unit is not a new admission to the voucher program. The option described in this paragraph (c)(4) is subject to the following conditions:

(i) If the family is in the initial term of the tenant-based lease, the family agreed to mutually terminate the tenant-based lease with the owner and enter into a PBV lease.

(ii) If the initial term of the tenant-based lease has passed or the end of that term coincides with the time at which the unit will be placed on the PBV HAP contract, upon the owner's decision not to renew the tenant-based lease or to terminate the tenant-based lease in accordance with 24 CFR 982.308 or 982.310, respectively, the family agreed to relinquish the tenant-based voucher and enter into a PBV lease.

(d) *Substituting or adding units that underwent repairs or renovation.* A unit that is not under a HAP contract but is in a project with other units that are under a HAP contract may undergo repairs or renovation prior to amending the PBV HAP contract to add or substitute the unit, except in the case of a contract subject to a rider under the rehabilitated housing option for development activity after HAP contract execution in accordance with § 983.157. If such repairs or renovation constitute substantial improvement as defined in § 983.3, then:

(1) The substantial improvement must not proceed prior to the first two years of the effective date of the HAP contract, except in extraordinary circumstances (*e.g.,* the units were damaged by fire, natural disaster, etc.).

(2) The substantial improvement is subject to the Federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

(3) As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131–12134) and implementing regulations at 28 CFR part 35, including §§ 35.150 and 35.151, apply to substantial improvement.

(4) Any substantial improvement that constitutes substantial rehabilitation as defined by 24 CFR 5.100 of a building with more than four rental units and where the proposal or project selection date or the start of the substantial improvement while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(i) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(5) An owner or project principal who is on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs, or who is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, may not participate in substantial improvement. The HAP contract must include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on such list and are not debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

(6) An owner must disclose any possible conflict of interest that would be a violation of the HAP contract or HUD regulations, in accordance with § 982.161 of this title.

(7) The requirements for additional assistance after HAP contract at § 983.11(d) apply.

(8) Section 983.155, Completion of work, applies.

(9) Paragraphs (a), (b)(4), and (d) of § 983.156, PHA acceptance of completed units, apply.

(e) *Restriction on substituting or adding newly built units.* Units may only be added to the HAP contract or substituted for a previously covered contract unit if one of the following conditions applies:

(1) The units to be added or substituted existed at the time of HAP contract execution;

(2) In the case of a project completed in stages, the units to be added or substituted existed at the time of PHA acceptance of the last completed unit(s) per § 983.156(c); or

(3) A unit, office space, or common area within the interior of a building containing contract units existed at the time described in paragraph (e)(1) or (2) of this section, as applicable, and is reconfigured without impacting the building envelope, subject to paragraph (d) of this section, into one or more units to be added or substituted.

(f) *Administrative Plan requirement.* The PHA must describe in the Administrative Plan the circumstances under which it will add or substitute contract units, and how those circumstances support the goals of the PBV program.

(g) *Staged completion of contract units.* Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

(h) *Amendment to merge or bifurcate HAP contracts.* HUD may establish a

process allowing the PHA and owner to agree to merge two or more HAP contracts for PBV assistance on the same project, or to bifurcate a HAP contract, by **Federal Register** notice subject to public comment.

■ 107. Revise and republish § 983.208 to read as follows:

**§ 983.208 Condition of contract units.**

(a) Owner maintenance and operation. (1) The owner must maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance.

(2) The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family.

(3) At the discretion of the PHA, the HAP contract may also require continuing owner compliance during the HAP contract term with additional housing quality requirements specified by the PHA (in addition to, but not in place of, compliance with HUD's HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified by the PHA (§ 983.204(c)). The PHA must specify the conditions under which it will require additional housing quality requirements in the Administrative Plan.

(b) *Enforcement of HQS.* (1) The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with HUD's HQS. If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take enforcement action in accordance with this section.

(2) The unit is in noncompliance with HQS if:

(i) The PHA or other inspector authorized by the State or local government determines the unit has HQS deficiencies based upon an inspection;

(ii) The agency or inspector notifies the owner in writing of the unit HQS deficiencies; and

(iii) The unit HQS deficiencies are not remedied within the following timeframes:

(A) For life-threatening deficiencies, the owner must correct the deficiency within 24 hours of notification.

(B) For other deficiencies, the owner must correct the deficiency within 30 calendar days of notification (or any reasonable PHA-approved extension).

(3) In the case of an HQS deficiency that the PHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than any damage resulting from ordinary use, the PHA may waive the owner's responsibility to remedy the violation. Housing assistance payments to the owner may not be withheld or abated if the owner responsibility has been waived. However, the PHA may terminate assistance to a family because of an HQS breach beyond damage resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control, which may result in removing the unit from the HAP contract.

(4) In the case of an HQS deficiency that is caused by fire, natural disaster, or similar extraordinary circumstances, the PHA may permit the owner to undertake substantial improvement in accordance with § 983.212. However, so long as the contract unit with deficiencies is occupied, the PHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

(5) In the case of a project that is undergoing development activity after HAP contract execution per § 983.157, the remedies of paragraph (d) of this section do not apply to units designated as unavailable for occupancy during the period of development activity in accordance with the rider. However, in the case of any contract unit with deficiencies that is occupied, the PHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

(c) *Family obligation.* (1) The family may be held 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 the PHA has waived the owner's responsibility to remedy the violation in accordance with paragraph (b)(3) of this section, the following applies:

(i) If the HQS breach caused by the family is life-threatening, the family must take all steps permissible under the lease and State and local law to ensure the deficiency is corrected within 24 hours of notification.

(ii) For other family-caused deficiencies, the family must take all steps permissible under the lease and State and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any PHA-approved extension).

(3) If the family has caused a breach of the HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with 24 CFR 982.552.

(d) *PHA remedies.* These remedies apply when HQS deficiencies are identified as the result of an inspection other than a pre-selection, initial, or turnover inspection. (See § 983.103 generally, and see § 983.103(c) in particular for PHA enforcement actions related to the initial HQS inspection for existing housing). The PHA must identify in its Administrative Plan the conditions under which it will withhold HAP and the conditions under which it will abate HAP or terminate the HAP contract for units other than the unit with HQS deficiencies.

(1) A PHA may withhold HAP for an individual unit that has HQS deficiencies once the PHA has notified the owner in writing of the deficiencies. If the unit is brought into compliance during the applicable cure period (within 24 hours from notification for life-threatening deficiencies and within 30 days from notification (or other reasonable period established by the PHA for non-life-threatening deficiencies), the PHA:

(i) Must resume assistance payments; and

(ii) Must provide assistance payments to cover the time period for which the assistance payments were withheld.

(2)(i) The PHA must abate the HAP, including amounts that had been withheld, for the PBV unit with deficiencies if the owner fails to make the repairs within the applicable cure period (within 24 hours from notification for life-threatening deficiencies and within 30 days from notification (or other reasonable period established by the PHA) for non-life-threatening deficiencies).

(ii) The PHA may choose to abate payments for all units covered by the HAP contract due to a contract unit's noncompliance with the HQS, even if some of the contract units continue to meet HQS.

(iii) If a PHA abates the HAP for a unit, the PHA must notify the family and the owner that it is abating payments and that if the unit with deficiencies does not meet HQS within 60 days after the determination of noncompliance (or a reasonable longer period established by the PHA), the PHA will either terminate the HAP

contract or remove the unit with deficiencies from the HAP contract, and any family residing in a unit that does not comply with HQS will have to move if the family wishes to receive continued assistance.

(3) An owner may not terminate the tenancy of any family due to the withholding or abatement of assistance. During the period that assistance is abated, the family may terminate the tenancy by notifying the owner. The PHA must promptly issue the family a tenant-based voucher to move.

(4) If the owner makes the repairs and the unit complies with HQS within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must recommence payments to the owner if the unit is still occupied by an assisted family. The PHA does not make any payments for the unit to the owner for the period of time that the payments were abated.

(5) If the owner fails to make the repairs within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must either remove the unit from the HAP contract or terminate the HAP contract in its entirety. The PHA must issue the family whose unit will be removed or all families residing in contract units, if the PHA is terminating the HAP contract, a tenant-based voucher to move at least 30 days prior to the removal of the unit from the HAP contract or termination of the HAP contract. A family may elect to remain in the project in accordance with § 983.206(b) if the project contains a unit that meets the requirements of that section, with priority given to families who will remain in the same unit if there are insufficient units available to accommodate all families that wish to remain.

(6)(i) The PHA must give any family residing in a unit that is either removed from the HAP contract or for which the HAP contract is terminated under this paragraph (d) due to a failure to correct HQS deficiencies at least 90 days or a longer period as the PHA determines is reasonably necessary following the termination of the HAP contract or removal of the unit from the HAP contract to lease a unit with tenant-based assistance.

(ii) If the family is unable to lease a new unit within the period provided by the PHA under paragraph (d)(6)(i) of this section and the PHA owns or operates public housing, the PHA must offer, and, if accepted, provide the family a selection preference for an appropriate-size public housing unit that first becomes available for occupancy after the time period expires.

(iii) PHAs may assist families relocating under this paragraph (d) in finding a new unit, including using up to 2 months of the withheld and abated assistance payments for costs directly associated with relocating to a new unit, including security deposits, temporary housing costs, or other reasonable moving costs as determined by the PHA based on their locality. PHAs must assist families with disabilities in locating available accessible units in accordance with 24 CFR 8.28(a)(3). If the PHA uses the withheld and abated assistance payments to assist with the family's relocation costs, the PHA must provide security deposit assistance to the family as necessary. If the family receives security deposit assistance from the PHA for the new unit, the PHA may require the family to remit the security deposit returned by the owner of the new unit at such time that the lease is terminated, up to the amount of the security deposit assistance provided by the PHA for that unit. The PHA must include in its Administrative Plan the policies it will implement for this provision.

(e) *Maintenance and replacement—Owner's standard practice.* Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

(f) *Applicability.* This section is applicable to HAP contracts executed on or after or extended on or after June 6, 2024. For purposes of this paragraph, a HAP contract is extended the earlier of the effective date of the next extension period or the date the PHA and owner agree to the next extension. For all other HAP contracts, § 983.208 as in effect on June 5, 2024 remains applicable. However, the PHA and owner may agree to apply this section to a HAP contract executed before June 6, 2024 prior to extension.

■ 108. Amend § 983.210 by revising paragraphs (a), (c), (d) and (e), and removing paragraph (j), to read as follows:

**§ 983.210 Owner certification.**

* * * * *

(a) The owner is maintaining the premises and all contract units in accordance with HUD's HQS under the requirements of this part 983.

* * * * *

(c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA or selected from the owner-maintained waiting list in accordance with § 983.251, and the lease is in accordance with the HAP contract and HUD requirements.

(d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence, except as provided in §§ 983.157(g)(6)(ii) and 983.212(a)(3)(ii).

(e) The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit unless needed as a reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities.

* * * * *

■ 109. Revise § 983.211 to read as follows:

**§ 983.211 Removal of unit from HAP contract based on a family's increased income.**

(a) *Removal of a unit based on a family's increased income.* Units occupied by families whose income has increased during their tenancy resulting in the total tenant payment equaling the gross rent shall be removed from the HAP contract 180 days following the last housing assistance payment on behalf of the family.

(b) *Reinstatement or substitution of HAP contracts.* If the project is fully assisted, a PHA may reinstate the unit removed under *paragraph (a)* of this section to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, a PHA may substitute a different unit for the unit removed under *paragraph (a)* of this section to the HAP contract when the first eligible substitute becomes available. A reinstatement or substitution of units under the HAP contract, in accordance with this paragraph, must be permissible under § 983.207(b) or (a), respectively.

(c) *Additional requirements.* The anniversary and expirations dates of the reinstated or substituted unit must be the same as all other units under the HAP contract (*i.e.,* the annual anniversary and expiration dates for the first contract units placed under the HAP contract). Families must be selected in accordance with program requirements under § 983.251 of this part.

■ 110. Add § 983.212 to subpart E to read as follows:

**§ 983.212 Substantial improvement to units under a HAP contract.**

(a) *Substantial improvement to units under a HAP contract.* The owner may undertake substantial improvement on a unit currently under a HAP contract, except a contract subject to a rider under the rehabilitated housing option for development activity after HAP contract execution in accordance with § 983.157, if approved to do so by the PHA. The owner may request PHA approval no earlier than the effective date of the HAP contract. The following conditions apply:

(1) The PHA may approve the substantial improvement only if one of the following conditions apply:

(i) The unit has been damaged by fire or natural disaster, or other extraordinary circumstances exist which require a unit previously compliant with HQS to urgently undergo substantial improvement. For this purpose, ''extraordinary circumstances'' are unforeseen events that are not the fault of the owner. The PHA may provide approval for substantial improvement resulting from the damage or extraordinary circumstances described in this paragraph (a)(1)(i) after the owner submits the request.

(ii) The owner requests to engage in substantial improvement that will commence following the first two years of the effective date of the HAP contract. The PHA may provide approval for substantial improvement occurring as described in this paragraph (a)(1)(ii) after the owner submits the request, but no earlier than twenty-one months after the effective date of the HAP contract.

(2) The owner's request must include a description of the substantial improvement proposed to be undertaken and the length of time, if any, the owner anticipates that the unit, including items and components within the primary and secondary means of egress, common features, and systems equipment as described by 24 CFR 5.703(a)(2), will not meet HQS. The PHA must not approve as substantial improvement, under this section, an owner's request to demolish a building containing contract units and newly construct replacement units (see requirements for contract termination at § 983.206 and requirements for newly constructed housing in this part 983).

(3) If the unit is occupied and will not meet HQS during any part of the period of the substantial improvement, the owner's request must include a description of the owner's plan to house the family during the period the unit will not meet HQS. The PHA must not approve the substantial improvement unless the owner's plan complies with one of the following requirements:

(i) The owner must complete the substantial improvement without the family vacating the unit if the PHA reasonably expects that the owner can complete the substantial improvement in a manner that:

(A) Does not result in life-threatening deficiencies;

(B) Does not result in any other deficiencies under the HQS that are not corrected within 30 days; and

(C) Is mutually agreeable to the owner and the family;

(ii) If the conditions for in-place substantial improvement in paragraph (a)(3)(i) of this section cannot be achieved, the owner must temporarily relocate the family to complete the substantial improvement if:

(A) The PHA reasonably expects that the owner can complete the relocation and substantial improvement within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month); and

(B) The family can be relocated to a location and in a manner mutually agreeable to the owner and the family; and

(iii) If the conditions for in-place substantial improvement in paragraph (a)(3)(i) of this section and temporary relocation in paragraph (a)(3)(ii) of this section cannot be achieved, the following protocol for lease termination and relocation applies:

(A) If there are contract units within the project will meet HQS during the period of substantial improvement and that are vacant or expected to become vacant at the time of the planned lease termination, the PHA must refer the family to the owner for occupancy of an appropriate-size contract unit. If the family accepts the offered unit, the owner must provide the family with a reasonable time to move to the offered unit, must pay the family's reasonable moving expenses, must execute a lease with the family for the offered unit to be effective at the time of the family's move, and must terminate the lease for the family's original unit at the time of the family's move. The owner must terminate the family's lease if the family rejects the offered unit; however, the PHA must first offer the family a different unit or tenant-based assistance under paragraph (a)(3)(iii)(B) of this section if needed as a reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities. The PHA must consider other family requests for a different unit or tenant-based assistance under paragraph (a)(3)(iii)(B) of this section;

(B) If no other contract unit within the project is available for the family to lease during the period of substantial improvement, the PHA must issue the family a tenant-based voucher. However, the PHA is not required to issue the family a voucher if the PHA has offered the family an alternative housing option (*e.g.,* an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher. The PHA may also issue the family a tenant-based voucher to accommodate the family's need or request as provided in paragraph (a)(3)(iii)(A) of this section. The PHA must issue the voucher no fewer than 90 calendar days prior to the planned lease termination in the case of substantial improvement pursuant to paragraph (a)(1)(ii) of this section. The PHA must issue the voucher as soon as practicable in the case of substantial improvement pursuant to paragraph (a)(1)(i) of this section. If the family is eligible and willing to request a voucher to move in accordance with § 983.261, the PHA must issue the family the voucher to move under that section. If the family is not eligible or is unwilling to request a voucher to move under § 983.261, the PHA must remove the family's unit from the PBV HAP contract and issue the family its voucher to move with tenant-based assistance and subsequently add a unit back to the PBV HAP contract at such time that the unit is ready for occupancy. The PHA must extend the voucher term until the family either leases a unit with the tenant-based voucher or accepts a contract unit, whichever occurs first; and

(C) If the family moves from the project during the period of substantial improvement, the PHA must offer the family the option to return to the project with PBV assistance, if the family is eligible for PBV assistance, following completion of substantial improvement at the project. The PHA, or owner in the case of an absolute selection preference for occupancy in the project.

(4) The PHA must abate housing assistance payments for a unit beginning at the time the unit has any deficiency under HUD's HQS during the period of substantial improvement. The timing for the PHA to begin withholding and abatement specified in § 983.208(d) does not apply to deficiencies occurring during the period of substantial improvement. When all deficiencies in the unit are corrected, the PHA must recommence payments to the owner if the unit is still occupied by an assisted family, subject to paragraphs (a)(5) and

(b)(1) of this section. Additionally, the PHA must not pay vacancy payments during the period of substantial improvement.

(5) The terms of the PHA approval must be recorded in an addendum to the HAP contract. The PHA may choose to temporarily remove vacant units from the PBV HAP contract during the time the units will not meet HQS during the substantial improvement. If the PHA temporarily removes a unit, the PHA reinstates the unit in accordance with § 983.207(b). Owner failure to complete the substantial improvement as approved shall be a breach of the HAP contract and the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination pursuant to § 983.206(c)(2).

(b) *Applicable requirements.* (1) Substantial improvement undertaken on units that are currently under a HAP contract is subject to the Federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

(2) As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131–12134) and implementing regulations at 28 CFR part 35, including §§ 35.150 and 35.151, apply to substantial improvement undertaken on units that are currently under a HAP contract.

(3) Any substantial improvement undertaken on units that are currently under a HAP contract that constitutes substantial rehabilitation as defined by 24 CFR 5.100 of a building with more than four rental units and where the proposal or project selection date or the start of the substantial improvement while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(i) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(4) An owner or project principal who is on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs, or who is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, may not participate in substantial improvement undertaken on units subject to a HAP contract. The HAP contract must include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on such list and are not debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

(5) An owner must disclose any possible conflict of interest that would be a violation of the HAP contract or HUD regulations, in accordance with § 982.161 of this title.

(6) The requirements for additional assistance after HAP contract at § 983.11(d) apply to substantial improvement undertaken on units that are currently under a HAP contract.

(7) Section 983.155, Completion of work, applies to substantial improvement undertaken on units that are currently under a HAP contract.

(8) Section 983.156(a), Inspection of units, and (d), PHA-owned units, apply to substantial improvement undertaken on units that are currently under a HAP contract.

(c) *PHA-owned units.* For PHA-owned units, the independent entity must determine whether to approve the PHA proposal to undertake substantial improvement as provided in paragraph (a) of this section, including making the determinations in paragraphs (a)(3)(i) and (a)(3)(ii)(A) when the owner will undertake substantial improvement in a unit currently occupied by an assisted family, as applicable (see § 983.57(b)(4)). The independent entity must approve the proposal if:

(1) The proposed substantial improvement meets one of the conditions of paragraph (a)(1) of this section;

(2) The description of the substantial improvement does not include plans to demolish a building containing contract units and newly construct replacement units; and

(3) The plan to house each family during the period that family's unit will not meet HQS complies with the requirements of paragraph (a)(3).

## Subpart F—Occupancy

■ 111. Revise and republish § 983.251 to read as follows:

### § 983.251 How participants are selected.

(a) Who may receive PBV assistance? (1) The PHA may select families who are participants in the PHA's tenant-based voucher program and families who have applied for admission to the voucher program.

(2) Except for voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission at commencement of PBV assistance, using information received and verified by the PHA within a period of 60 days before commencement of PBV assistance. For all families, the PHA must determine the total tenant payment for the family is less than the gross rent, such that the unit will be eligible for a monthly HAP.

(3) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program.

(4) A PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities.

(b) *Protection of in-place families.* (1) To minimize displacement of in-place families, if an in-place family is determined to be eligible prior to placement of the family's unit on the HAP contract, the in-place family must be placed on the PBV waiting list (if the family is not already on the list) and given an absolute selection preference. If the PHA's waiting list for PBV assistance is not a project-specific waiting list, the PHA must refer the family to the applicable project owner for an appropriate-size PBV unit in the specific project.

(2) If the in-place family is a tenant-based voucher participant, program eligibility is not re-determined. However, the PHA must determine that the total tenant payment for the family is less than the gross rent for the unit, such that the unit will be eligible for a

monthly HAP, and the PHA may deny or terminate assistance for the grounds specified in 24 CFR 982.552 and 982.553.

(3)(i) During the initial term of the lease under the tenant-based tenancy, an in-place tenant-based voucher family may agree, but is not required, to mutually terminate the lease with the owner and enter into a lease and tenancy under the PBV program. If the family chooses to continue the tenant-based assisted tenancy, the unit may not be added to the PBV HAP contract. The owner may not terminate the lease for other good cause during the initial term unless the owner is terminating the tenancy because of something the family did or failed to do in accordance with 24 CFR 982.310(d)(2). The owner is expressly prohibited from terminating the tenancy during the initial term of the lease based on the family's failure to accept the offer of a new lease or revision, or for a business or economic reason.

(ii) If, after the initial term, the owner chooses not to renew the lease or terminates the lease for other good cause (as defined in 24 CFR 982.310(d)) to end the tenant-based assisted tenancy, the family would be required to move with continued tenant-based assistance or relinquish the tenant-based voucher and enter into a new lease to receive PBV assistance in order to remain in the unit.

(4) Admission of in-place families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i).

(c) *Selection from waiting list.* (1) Applicants who will occupy PBV units must be selected from the waiting list for the PBV program.

(2) The PHA must identify in the Administrative Plan which of the following options it will use to structure the waiting list for the PBV program:

(i) The PHA may use a separate, central, waiting list comprised of more than one, or all, PBV projects;

(ii) The PHA may use the same waiting list for both tenant-based assistance and some or all PBV projects; or

(iii) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units). This option may be used in combination with the option in paragraph (c)(2)(i) or (ii) of this section. The PHA must specify the name of the PBV project in the Administrative Plan. The PHA may permit the owner to maintain such waiting lists (see paragraph (c)(7) of this section for more information).

(3) For any of the options under paragraph (c)(2) of this section, the PHA may establish in its Administrative Plan any preferences for occupancy of particular units including the name of the project(s) and the specific preferences that are to be used by project. Criteria for occupancy of units (*e.g.,* elderly families) may also be established; however, selection of families must be done through an admissions preference.

(4) The PHA may merge the waiting list for PBV assistance with the PHA waiting list for admission to another assisted housing program.

(5) Where applicable, the PHA may place families referred by the PBV owner on its PBV waiting list.

(6) If the PHA chooses to use a separate waiting list for admission to PBV units under paragraphs (c)(2)(i) and (iii) of this section, the PHA must offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance (including owner-maintained PBV waiting lists).

(7) PHAs using separate waiting lists for individual projects or buildings, as described in paragraph (c)(2)(iii) of this section, may establish in their Administrative Plan that owners will maintain such waiting lists. PHAs may choose to use owner-maintained PBV waiting lists for specific owners or projects. PHAs may permit an owner to maintain a single waiting list across multiple projects owned by the owner. Under an owner-maintained waiting list, the owner is responsible for carrying out responsibilities including, but not limited to, processing changes in applicant information, removing an applicant's name from the waiting list, opening and closing the waiting list. PHAs must identify in their Administrative Plans the name of the project(s), the oversight procedures the PHA will use to ensure owner-maintained waiting lists are administered properly and in accordance with program requirements, and the approval process of an owner's waiting list policy (including any preferences). Where a PHA allows for owner-maintained waiting lists, all the following apply:

(i) The owner must develop and submit a written owner waiting list policy to the PHA for approval. The owner waiting list policy must include policies and procedures concerning waiting list management and selection of applicants from the project's waiting list, including any admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the waiting list. The owner must receive approval from the PHA of its owner waiting list policy in accordance with the process established in the PHA's Administrative Plan. The owner's waiting list policy must be incorporated in the PHA's Administrative Plan.

(ii) The owner must receive approval from the PHA for any preferences that will be applicable to the project. The PHA will approve such preferences as part of its approval of the owner's waiting list policy. Each project may have a different set of preferences. Preferences must be consistent with the PHA Plan and listed in the owner's waiting list policy.

(iii) The owner is responsible for opening and closing the waiting list, including providing public notice when the owner opens the waiting list in accordance with 24 CFR 982.206. If the owner-maintained waiting list is open and additional applicants are needed to fill vacant units, the owner must give public notice in accordance with the requirements of 24 CFR 982.206 and the owner waiting list policy.

(iv) The applicant may apply directly at the project, or the applicant may request that the PHA refer the applicant to the owner for placement on the project's waiting list. The PHA must disclose to the applicant all the PBV projects available to the applicant, including the projects' contact information and other basic information about the project.

(v) Applicants already on the PHA's waiting list must be permitted to place their names on the project's waiting lists.

(vi) At the discretion of the PHA, the owner may make preliminary eligibility determinations for purposes of placing the family on the waiting list, and preference eligibility determinations. The PHA may choose to make this determination rather than delegating it to the owner.

(vii) If the PHA delegated the preliminary eligibility and preference determinations to the owner, the owner is responsible for notifying the family of the owner's determination not to place the applicant on the waiting list and a determination that the family is not eligible for a preference. In such a case, the owner is responsible to provide the notice at 24 CFR 982.554(a) of this title. The PHA is then responsible for conducting the informal review.

(viii) Once an owner selects the family from the waiting list, the owner refers the family to the PHA who then determines the family's final program eligibility. The owner may not offer a unit to the family until the PHA determines that the family is eligible for the program.

(ix) All HCV waiting list administration requirements that apply to the PBV program (24 CFR part 982, subpart E, other than 24 CFR 982.201(e), 982.202(b)(2), and 982.204(d)) apply to owner-maintained waiting lists.

(x) The PHA is responsible for oversight of owner-maintained waiting lists to ensure that they are administered properly and in accordance with program requirements, including but not limited to nondiscrimination and equal opportunity requirements under the authorities cited at 24 CFR 5.105(a). The owner is responsible for maintaining complete and accurate records as described in 24 CFR 982.158. The owner must give the PHA, HUD, and the Comptroller General full and free access to its offices and records concerning waiting list management, as described in 24 CFR 982.158(c). HUD may undertake investigation to determine whether the PHA or owner is in violation of authorities and, if unable to reach a voluntary resolution to correct the violation, take an enforcement action against either the owner or the PHA, or both.

(8) Not less than 75 percent of the families admitted to a PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the PHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) apply to the total of admissions to the PHA's project-based voucher program and tenant-based voucher program during the PHA fiscal year from the PHA waiting list (including owner-maintained PBV waiting lists) for such programs.

(9) Families who require particular accessibility features for persons with disabilities must be selected first to occupy PBV units with such accessibility features (see 24 CFR 8.26, 8.27, and 100.202). Also see § 983.260. The PHA shall have some mechanism for referring to accessible PBV units a family that includes a person with a mobility or sensory impairment.

(d) *Preference for services offered.* In selecting families, PHAs (or owners in the case of owner-maintained waiting lists) may give preference to families who qualify for voluntary services, including disability-specific services, offered at a particular project, consistent with the PHA Plan and Administrative Plan.

(1) The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.

(2) Families must not be required to accept the particular services offered at the project nor shall families be required to provide their own equivalent services if they decline the project's services.

(3) In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the preference must be provided to all applicants who qualify for the voluntary services offered in conjunction with the assisted units.

(e) *Offer of PBV assistance or owner's rejection.* (1) If a family refuses the PHA's offer of PBV assistance or the owner rejects a family for admission to the owner's PBV units, the family's position on the PHA waiting list for tenant-based assistance is not affected regardless of the type of PBV waiting list used by the PHA.

(2) The impact (of a family's rejection of the offer or the owner's rejection of the family) on a family's position on the PBV waiting list will be determined as follows:

(i) If a central PBV waiting list is used, the PHA's Administrative Plan must address the number of offers a family may reject without good cause before the family is removed from the PBV waiting list and whether the owner's rejection will impact the family's place on the PBV waiting list.

(ii) If a project-specific PBV waiting list is used, the family's name is removed from the project's waiting list connected to the family's rejection of the offer without good cause or the owner's rejection of the family. The family's position on any other project-specific PBV waiting list is not affected.

(iii) The PHA must define ''good cause'' for purposes of paragraphs (e)(2)(i) and (ii) of this section in its Administrative Plan. The PHA's definition of good cause must include, at minimum, that:

(A) The family determines the unit is not accessible to a household member with a disability or otherwise does not meet the member's disability-related needs;

(B) The unit has HQS deficiencies;

(C) The family is unable to accept the offer due to circumstances beyond the family's control (such as hospitalization, temporary economic hardship, or natural disaster); and

(D) The family determines the unit presents a health or safety risk to a household member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in part 5, subpart L of this title.

(3) None of the following actions may be taken against an applicant solely because the applicant has applied for, received, or refused an offer of PBV assistance:

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance or any other available PBV waiting list. However, the PHA (or owner in the case of owner-maintained waiting lists) is not required to open a closed waiting list to place the family on that waiting list.

(ii) Deny any admission preference for which the applicant is currently qualified.

(iii) Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection from the waiting list.

(iv) Remove the applicant from the waiting list for tenant-based voucher assistance.

■ 112. Revise and republish § 983.252 to read as follows:

**§ 983.252 PHA information for accepted family.**

(a) *Oral briefing.* When a family accepts an offer of PBV assistance, the PHA must give the family an oral briefing.

(1) The briefing must include information on the following subjects:

(i) A description of how the program works;

(ii) Family and owner responsibilities; and

(iii) Family right to move.

(2) The PHA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E, and must provide information on the reasonable accommodation process.

(b) *Information packet.* The PHA must give the family a packet that includes information on the following subjects:

(1) How the PHA determines the total tenant payment for a family;

(2) Family obligations under the program; and

(3) Information on Federal, State, and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;

(4) PHA subsidy standards, including when the PHA will consider granting exceptions to the standards as allowed by 24 CFR 982.402(b)(8), and when exceptions are required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act, or the Americans with Disabilities Act; and

(5) Family right to move.

(c) *Statement of family responsibility.* The PHA and family must sign the statement of family responsibility.

(d) *Providing information for persons with limited English proficiency.* The PHA must take reasonable steps to ensure meaningful access by persons with limited English proficiency in accordance with obligations and procedures contained in Title VI of the Civil Rights Act of 1964, and HUD's implementing regulation at 24 CFR part 1., Executive Order 13166, and HUD's *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (72 FR 2732) or successor authority.

■ 113. Amend § 983.253 by revising paragraphs (a)(1) and (3) to read as follows:

**§ 983.253 Leasing of contract units.**

(a) * * *

(1) During the term of the HAP contract, the owner must lease contract units only to eligible families selected from the waiting list for the PBV program in accordance with § 983.251 of this part.

* * * * *

(3) An owner must promptly notify in writing any rejected applicant of the grounds for any rejection. The owner must provide a copy of such rejection notice to the PHA.

* * * * *

■ 114. Revise § 983.254 to read as follows:

**§ 983.254 Vacancies.**

(a) *Filling vacant units.* (1) The PHA and the owner must make reasonable good-faith efforts to minimize the likelihood and length of any vacancy in a contract unit. However, contract units in a rehabilitated housing project undergoing development activity after HAP contract execution that are not available for occupancy in accordance with § 983.157(e)(5) are not subject to this requirement.

(i) If an owner-maintained waiting list is used, in accordance with § 983.251, the owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit and refer the family to the PHA for final eligibility determination. The PHA must make every reasonable effort to make such final eligibility determination within 30 calendar days.

(ii) If a PHA-maintained waiting list is used, in accordance with § 983.251, the owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit, and the PHA must, after receiving the owner notice, make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies within 30 calendar days.

(2) The owner must lease vacant contract units only to families determined eligible by the PHA.

(b) *Reducing number of contract units.* If any contract units have been vacant for a period of 120 days or more since owner notice of vacancy, as required in paragraph (a) of this section, and notwithstanding the reasonable good-faith efforts of the PHA and the owner to fill such vacancies, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

■ 115. Amend § 983.255 by revising paragraphs (a)(2) and (c)(4) to read as follows:

**§ 983.255 Tenant screening.**

(a) * * *

(2) The PHA must conduct tenant screening of applicants in accordance with policies stated in the PHA Administrative Plan.

(c) * * *

(4) The PHA policy must be stated in the Administrative Plan and provide that the PHA will give the same types of information to all owners.

* * * * *

■ 116. Revise § 983.257 to read as follows:

**§ 983.257 Owner termination of tenancy and eviction.**

24 CFR 982.310 of this title applies with the exception that 24 CFR 982.310(d)(1)(iii) and (iv) does not apply to the PBV program. (In the PBV program, ''good cause'' does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) In addition, the owner may terminate the tenancy in accordance with the requirements related to lease terminations for development activity on units under a HAP contract as provided in § 983.157(g)(6)(iii) and for substantial improvement to units under a HAP contract as provided in § 983.212(a)(3)(iii). 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse and 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to the PBV program.

■ 117. Amend § 983.259 by:

■ a. Adding a heading to paragraph (a);

■ b. Revising paragraph (b); and

■ c. Adding headings to paragraphs (c) through (e).

The additions and revisions read as follows:

**§ 983.259 Security deposit: Amounts owed by tenant.**

(a) *Security deposit permitted.* * * *

(b) *Amount of security deposit.* The PHA must prohibit the owner from charging assisted tenants security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) *Use of security deposit.* * * *

(d) *Security deposit reimbursement to owner.* * * *

(e) *Insufficiency of security deposit.* * * *

■ 118. Revise § 983.260 to read as follows:

**§ 983.260 Overcrowded, under-occupied, and accessible units.**

(a) *Family occupancy of wrong-size or accessible unit.* (1) The PHA subsidy standards determine the appropriate unit size for the family size and composition.

(2) If the PHA determines that a family is occupying a wrong-size unit, or a unit with accessibility features that the family does not require and the unit is needed by a family that requires the accessibility features (see 24 CFR 8.27), the PHA must:

(i) Within 30 days from the PHA's determination, notify the family and the owner of this determination; and

(ii) Within 60 days from the PHA's determination, offer the family continued housing assistance, pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.* (1) The PHA policy on continued housing assistance must be stated in the Administrative Plan and may be in the form of:

(i) PBV assistance in an appropriate-size unit (in the same project or in another project);

(ii) Other project-based housing assistance (*e.g.,* by occupancy of a public housing unit);

(iii) Tenant-based rental assistance under the voucher program; or

(iv) Other comparable tenant-based rental assistance.

(2) If no continued housing assistance as described in paragraph (b)(1) of this section is available, the PHA must remove the wrong-size or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher. Section 983.206(b) does not apply to families issued a tenant-based voucher under the

circumstance described in this paragraph (b)(2).

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program:

(i) The PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

(ii) If the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

(2) If the PHA offers the family another form of continued housing assistance (other than tenant-based rental assistance under the voucher program), in accordance with paragraph (b)(1) of this section, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when:

(i) In the case of an offer by the PHA of PBV assistance or other project-based housing assistance in an appropriate-size unit, the family does not accept the offer and does not move out of the PBV unit within a reasonable time as determined by the PHA, not to exceed 90 days. The family may request and the PHA may grant one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing.

(ii) In the case of an offer by the PHA of PBV assistance or other project-based housing assistance in an appropriate size unit, the family accepts the offer but does not move out of the PBV unit within a reasonable time as determined by the PHA, not to exceed 90 days.

(iii) In the case of an offer by the PHA of other comparable tenant-based rental assistance, the family either accepts or does not accept the offer but does not move out of the PBV unit within a reasonable time as determined by the PHA, not to exceed 90 days. The family may request and the PHA may grant one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate, affordable, safe, and geographically proximate replacement housing.

(d) *Reinstatement.* The PHA may reinstate a unit removed under paragraph (b)(2), (c)(1)(ii), or (c)(2) of this section to the HAP contract after the family vacates the property, in accordance with § 983.207(b).

■ 119. Revise § 983.261 to read as follows:

**§ 983.261 Family right to move.**

(a) *Termination of assisted lease after one year.* The family may terminate the assisted lease at any time after one year of PBV assistance. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

(b) *Continued assistance.* If the family has elected to terminate the lease in accordance with paragraph (a) of this section, the PHA must offer the family the opportunity for continued tenant-based rental assistance. The PHA must specify in the Administrative Plan whether it will offer families assistance under the voucher program or other comparable tenant-based rental assistance. If voucher assistance is offered to the family and the search term expires, the PHA must issue the voucher to the next eligible family.

(c) *Contacting the PHA.* Before providing notice to terminate the lease under *paragraph (a)* of this section, a family must contact the PHA to request a voucher or comparable tenant-based rental assistance if the family wishes to move with continued assistance. If a voucher or other comparable tenant-based rental assistance is not immediately available to the family upon the family's request to the PHA, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance. The PHA must describe in its Administrative Plan its policies and procedures for how the family must contact the PHA and how the PHA documents families waiting for continued tenant-based rental assistance.

(d) *Termination of assisted lease before one year.* If the family terminates the assisted lease before one year of PBV assistance, the family relinquishes the opportunity for continued tenant-based assistance under this section.

(e) *Notice exclusion.* When the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, the family is not required to give the owner advance written notice or contact the PHA under paragraph (a) and (c), respectively, of this section before moving from the unit. Additionally, when any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move, the family is not required to give the owner advance written notice or contact the PHA under paragraph (a) and (c), respectively, of this section before moving from the unit. A PHA may not terminate the assistance of a family due to a move occurring under the circumstances in this paragraph (e) and must offer the family the opportunity for continued tenant-based assistance if the family had received at least one year of PBV assistance prior to moving.

(f) *Emergency Transfer Plans.* In the case of a move due to domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, PHAs must describe policies for facilitating emergency transfers for families with PBV assistance in their Emergency Transfer Plan, consistent with the requirements in 24 CFR 5.2005(e), including when the victim has received PBV assistance for less than one year and is not eligible for continued assistance under § 983.261(b).

(g) *Family break-up.* If a family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), the PHA must ensure that the victim retains assistance in accordance with 24 CFR 982.315(a)(2).

■ 120. Revise § 983.262 to read as follows:

**§ 983.262 Occupancy of units under the increased program cap and project cap excepted units.**

(a) *General.* Pursuant to § 983.6(a), a PHA may commit project-based assistance to no more than 20 percent of its authorized voucher units at the time of commitment. There are certain units eligible for an increased program cap as described in § 983.6(d). Pursuant to § 983.54(a), the PHA may not select a proposal to provide PBV assistance or place units under an Agreement or a HAP contract in excess of the project cap. There are certain exceptions to the project cap as described in § 983.54(c). This section provides more detail on the occupancy requirements of both the excepted units from the project cap under § 983.54(c)(2) and units under the increased program cap under § 983.6(d).

(b) *Requirements applicable to both excepted units and units under an increased program cap.* (1) The unit must be occupied by a family who meets the applicable exception.

(2) The family must be selected from the waiting list for the PBV program

through an admissions preference (see § 983.251).

(3) Once the family vacates the unit, the unit must be made available to and occupied by a family that meets the applicable exception.

(4) The PHA must specify in its Administrative Plan which of the options below the PHA will take if a unit is no longer qualified for its excepted status or the increased program cap:

(i) Substitute the unit for another unit if it is possible to do so in accordance with § 983.207(a), so that the overall number of excepted units or units under the increased program cap in the project is not reduced. A PHA may, in conjunction with such substitution, add the original unit to the HAP contract if it is possible to do so in accordance with § 983.207(b), including that such addition does not cause the PHA to exceed the program cap or become non-compliant with the project cap.

(ii) Remove the unit from the PBV HAP contract. In conjunction with the removal, the PHA may provide the family with tenant-based assistance, if the family is eligible for tenant-based assistance. The family and the owner may agree to use the tenant-based voucher in the unit; otherwise, the family must move from the unit with the tenant-based voucher. If the family later vacates the unit, the PHA may add the unit to the PBV HAP contract in accordance with § 983.207.

(iii) Change the unit's status under the project cap or program cap, as applicable, provided that the change does not cause the PHA to exceed the program cap or become non-compliant with the project cap.

(c) *Requirements for units under the increased program cap*—(1) *Homeless family.* A unit qualifies under the increased program cap at § 983.6(d)(1)(i) if the family meets the definition of homeless under Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), included in 24 CFR 578.3, at the time the family first occupies the unit.

(2) *Veteran family.* A unit qualifies under the increased program cap at § 983.6(d)(1)(ii) if the family is comprised of or includes a veteran (a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom) at the time the family first occupies the unit.

(3) *Supportive housing for persons with disabilities or elderly persons.* The following applies to the increased program cap category at § 983.6(d)(1)(iii):

(i) A disabled or elderly member of the family must be eligible for one or more of the supportive services at the time the family first occupies the unit. The member of the family may choose not to participate in the services.

(ii) The PHA must state in its Administrative Plan whether it will allow a family that initially qualified for supportive housing for persons with disabilities or elderly persons to continue to reside in a unit, where through circumstances beyond the control of the family (*e.g.,* death of the elderly family member or family member with a disability or long term or permanent hospitalization or nursing care), the elderly family member or family member with a disability no longer resides in the unit. In this case, the unit may continue to count under the increased program cap category for as long as the family resides in that unit. However, the requirements of § 983.260, concerning wrong-sized units, apply. If the PHA chooses not to exercise this discretion, the unit no longer counts under the increased program cap category and, if the family is not required to move from the unit as a result of § 983.260, the PHA may use one of the options described in paragraph (b)(4) of this section.

(4) *Units for Family Unification Program (FUP) youth.* See paragraph (e) of this section for requirements relating to the increased program cap category at § 983.6(d)(2).

(d) *Requirements for project cap excepted units*—(1) *Elderly family.* A unit under the project cap exception category at § 983.54(c)(2)(i) must be occupied by an elderly family, as defined in 24 CFR 5.403. The PHA must state in its Administrative Plan whether it will allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (*e.g.,* death of the elderly family member or long term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. However, the requirements of § 983.260, concerning wrong-sized units, apply. If the PHA chooses not to exercise this discretion, the unit is no longer considered excepted and, if the family is not required to move from the unit as a result of § 983.260, the PHA may use one of the options described in paragraph (b)(4) of this section.

(2) *Disabled family.* The same provisions of paragraph (d)(1) of this section apply to units previously excepted based on disabled family status under a HAP contract in effect prior to April 18, 2017.

(3) *Supportive services.* The following applies under the project cap exception category at § 983.54(c)(2)(iii):

(i) A unit is excepted if any member of the family is eligible for one or more of the supportive services even if the family chooses not to participate in the services.

(ii) If any member of the family chooses to participate and successfully completes the supportive services, the unit continues to be excepted for as long as any member of the family resides in the unit, even if the members that continue to reside in the unit are ineligible during tenancy for all available supportive services.

(iii) The unit loses its excepted status only if the entire family becomes ineligible during the tenancy for all supportive services available to the family. This provision does not apply where any member of the family has successfully completed the supportive services under paragraph (c)(2) of this section.

(iv) A family cannot be terminated from the program or evicted from the unit because they become ineligible for all supportive services during the tenancy.

(4) *Units for FUP youth.* See paragraph (e) of this section for requirements relating to the increased project cap exception category at § 983.54(c)(2)(ii).

(e) *Requirements for units for FUP youth under the increased program cap and project cap exception.* The following applies under the project cap exception category at § 983.54(c)(2)(ii) and the increased program cap category at § 983.6(d)(2):

(1) A unit is excepted from the project cap or qualifies under the increased program cap, as applicable, if the unit is occupied by an eligible youth receiving FUP assistance.

(2) The youth must vacate the unit once the FUP assistance has expired. The unit loses its excepted status or no longer qualifies under the increased program cap, as applicable, if the youth does not move from the unit upon the expiration of the FUP assistance.

## Subpart G—Rent to Owner

■ 121. Amend § 983.301 by revising paragraphs (b)(1), (c)(2)(i), (f), and (g) to read as follows:

**§ 983.301 Determining the rent to owner.**

* * * * *

(b) * * *

(1) An amount determined by the PHA in accordance with the Administrative Plan not to exceed 110 percent of the applicable fair market rent (or the amount of any applicable exception payment standard) for the unit bedroom size minus any utility allowance;

(c) * * *

(2) * * *

(i) An amount determined by the PHA in accordance with the Administrative Plan, not to exceed the tax credit rent minus any utility allowance;

* * * * *

(f) *Use of FMRs and utility allowance schedule in determining the amount of rent to owner.* (1) When determining the initial rent to owner, the PHA shall use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, the PHA may use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract.

(2) When redetermining the rent to owner, the PHA shall use the most recently published FMR and the PHA utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

(3)(i) For PBV projects that are not located in a designated SAFMR area under 24 CFR 888.113(c)(1), or for PBV projects not located in a ZIP code where the PHA has opted in under 24 CFR 888.113(c)(3), any exception payment standard amount approved under 24 CFR 982.503(d)(2)–(4) applies for purposes of paragraphs (b)(1) and (c)(1)(iv) of this section. HUD will not approve a different payment standard amount for use in the PBV program.

(ii) For PBV projects that are located in a designated SAFMR area under 24 CFR 888.113(c)(1), or for PBV projects located in a ZIP code where the PHA has opted in under 24 CFR 888.113(c)(3), an exception payment standard amount approved under 24 CFR 982.503(d)(3)–(4) will apply for purposes of paragraphs (b)(1) and (c)(1)(iv) of this section only if the PHA has adopted a policy applying SAFMRs to its PBV program and met all other requirements in accordance with 24 CFR 888.113(h).

(4) HUD may establish a process allowing PHAs to adopt project-specific utility allowances by notification in the **Federal Register** subject to public comment. Absent the establishment of such a project-specific utility allowance, the PHA's utility allowance schedule as determined under 24 CFR 982.517(b)(2)(i) or (ii) applies to both the tenant-based and PBV programs.

(5) The PHA must continue to use the applicable utility allowance schedule for the purpose of determining the initial rent to owner and redetermining the rent to owner for contract units, as outlined in this 24 CFR 983.301, regardless of whether the PHA approves a higher utility allowance as a reasonable accommodation for a person with disabilities living in a contract unit (see 24 CFR 982.517(e)).

(g) *PHA-owned units.* For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the annual anniversary of the HAP contract must be determined by the independent entity approved by HUD in accordance with § 983.57. The PHA must use the rent to owner established by the independent entity.

■ 122. Revise § 983.302 to read as follows:

**§ 983.302 Redetermination of rent to owner.**

(a) *Requirement to redetermine the rent to owner.* The PHA must redetermine the rent to owner:

(1) When there is a 10 percent decrease in the published FMR;

(2) Upon the owner's request consistent with requirements established in the PHA's Administrative Plan. The Administrative Plan must specify any advance notice the owner must give the PHA and the form the request must take; or

(3) At the time of the automatic adjustment by an operating cost adjustment factor (OCAF) in accordance with paragraph (b)(3).

(b) *Rent increase.* (1) An owner may receive an increase in the rent to owner during the term of a HAP contract. Any such increase will go into effect at the annual anniversary of the HAP contract. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(c)(2)(B) do not apply to the voucher program.)

(2) A rent increase may occur through automatic adjustment by an operating cost adjustment factor (OCAF) or as the result of an owner request for such an increase. A rent increase as the result of an owner request must be determined by the PHA pursuant to § 983.301(b) or (c), as applicable. A rent increase through an adjustment by an OCAF is likewise subject to § 983.301(b) or (c), as applicable, except there is no rent request by the owner to take into account since the PHA redetermines the rent automatically under that option.

(3) By agreement of the parties, the HAP contract may provide for rent adjustments using an operating cost adjustment factor (OCAF) established by the Secretary pursuant to Section 524(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 at each annual anniversary of the HAP contract. OCAFs are established by the Secretary and published annually in the **Federal Register**. The provisions in the following paragraphs apply to a contract that provides for rent adjustments using an OCAF:

(i) The contract may require an additional increase up to an amount determined by the PHA pursuant to § 983.301(b) or (c), as applicable, if requested by the owner in writing, periodically during the term of the contract.

(ii) The contract shall require an additional increase up to an amount determined by the PHA pursuant to § 983.301(b) or (c), as applicable, at the point of contract extension, if requested by the owner in writing.

(4) If the HAP contract does not provide for automatic adjustment by an OCAF, then an owner who wishes to receive an increase in the rent to owner must request such an increase at the annual anniversary of the HAP contract by written notice to the PHA.

(5) The PHA must establish the length of the required notice period for any rent increase that requires a written request from the owner. The written request must be submitted as required by the PHA (*e.g.,* to a particular mailing address or email address).

(6) The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS (except that HQS compliance is not required for purposes of this provision for units undergoing development activity that complies with § 983.157 or substantial improvement that complies with § 983.212). The owner may not receive any retroactive increase of rent for any period of noncompliance.

(c) *Rent decrease.* (1) If the HAP contract provides for rent adjustments by an OCAF and there is a decrease in the fair market rent, tax credit rent, or reasonable rent that requires a decrease to the rent to owner (see paragraph (b)(2)), the rent to owner must be decreased. If the HAP contract does not provide for adjustment by an OCAF and there is a decrease in the rent to owner, as established in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requests a rent adjustment.

(2) At any time during the term of the HAP contract, the PHA may elect within the HAP contract to not reduce rents below the initial rent to owner. Where a PHA makes such an election, the rent to owner shall not be reduced below the initial rent to owner, except:

(i) To correct errors in calculations in accordance with HUD requirements;

(ii) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to § 983.153(b); or

(iii) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

(d) *Notice of change in rent to owner.* Whenever there is a change in rent to owner, the PHA must provide written notice to the owner specifying the amount of the new rent to owner (as determined in accordance with §§ 983.301 and 983.302). The PHA notice of the rent change in rent to owner constitutes an amendment of the rent to owner specified in the HAP contract.

(e) *Contract year and annual anniversary of the HAP contract.* (1) The contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

(2) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

(3) The annual anniversary of the HAP contract for contract units completed in stages must follow § 983.207(g).

■ 123. Amend § 983.303 by:

■ a. Removing from paragraph (a) the citation to ''§ 983.302(e)(2)'' and adding, in its place, a citation to ''§ 983.302(c)(2)'';

■ b. Revising paragraph (b)(3);

■ c. Redesignating paragraph (b)(4) as paragraph (b)(5) and adding a new paragraph (b)(4);

■ d. Adding paragraph (c)(3); and

■ e. Revising paragraph (f).

The revisions and additions read as follows:

**§ 983.303 Reasonable rent.**

* * * * *

(b) * * *

(3) Whenever the HAP contract is amended to add a contract unit or substitute a different contract unit in the same building or project;

(4) Whenever the PHA accepts a completed unit after development activity that is conducted after HAP contract execution (see § 983.156(b)(3)); and

* * * * *

(c) * * *

(3) The reasonable rent determination must be based on the condition of the assisted unit at the time of the determination and not on anticipated future unit conditions.

* * * * *

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned units, the amount of the reasonable rent must be determined by an independent entity in accordance with § 983.57, rather than by the PHA. The reasonable rent must be determined in accordance with this section.

(2) The independent entity must furnish a copy of the independent entity determination of reasonable rent for PHA-owned units to the PHA.

## Subpart H—Payment to Owner

■ 124. Amend § 983.352 by adding a sentence to the end of paragraph (b)(1) to read as follows:

**§ 983.352 Vacancy payment.**

* * * * *

(b) * * *

(1) * * * The PHA must include in its Administrative Plan the PHA's policy on the conditions under which it will allow vacancy payments in a HAP contract, the duration of the payments, amount of vacancy payments it will make to an owner, and the required form and manner of requests for vacancy payments, in accordance with paragraph (b)(4) of this section.

* * * * *

■ 125. Amend § 983.353 by revising paragraph (d)(2) to read as follows:

**§ 983.353 Tenant rent; payment to owner.**

* * * * *

(d) * * *

(2) The PHA must describe in its Administrative Plan its policies on paying the utility reimbursement directly to the family or directly to the utility supplier.

* * * * *

## PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

■ 126. The authority for part 985 continues to read as follows:

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

■ 127. Amend § 985.3 by:

■ a. Revising the second paragraph of the undesignated introductory text and the parenthetical at the end of paragraph (b)(1);

■ b. In paragraph (b)(3)(i)(B), removing the reference to ''§ 982.507 of this chapter'' and adding, in its place, a reference to ''§§ 982.507 and 983.303 of this chapter, as applicable'';

■ c. Revising paragraph (c)(3)(i)(A);

■ d. In paragraph (e)(3)(i), removing the citation to ''§ 983.2'' and adding, in its place, a citation to ''§ 985.2''; and

■ e. Revising paragraphs (i)(1), (i)(3), (k)(1), (k)(2), and (l), the heading of paragraph (m), and paragraphs (m)(1), (m)(3), (p)(1), and (p)(3)(i)(B).

The revisions read as follows:

**§ 985.3 Indicators, HUD verification methods and ratings.**

* * * * *

A PHA that expends less than its Federal award expenditure threshold in 2 CFR Subpart F, and whose Section 8 programs are not audited by an independent auditor (IA), will not be rated under the SEMAP indicators in paragraphs (a) through (g) of this section for which the annual IA audit report is a HUD verification method.

* * * * *

(b) * * *

(1) * * * (24 CFR 982.4, 24 CFR 982.54(d)(15), 982.158(f)(7), 982.507, and 983.303)

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) The PHA obtains third party verification, as appropriate, of reported family annual income, the value of assets, expenses related to deductions from annual income, and other factors that affect the determination of adjusted income, and uses the verified information in determining adjusted income, and/or documents tenant files to show why third party verification was not available;

* * * * *

(i) * * *

(1) This indicator shows whether the PHA has adopted payment standard schedule(s) in accordance with § 982.503.

* * * * *

(3) Rating:

(i) The PHA's voucher program payment standard schedule contains payment standards set in accordance with 24 CFR 982.503. 5 points.

(ii) The PHA's voucher program payment standard schedule contains payment standards that were not set in accordance with § 982.503. 0 points.

* * * * *

(k) * * *

(1) This indicator shows whether the PHA correctly calculates the family's

share of the rent to owner in the rental voucher program. (24 CFR part 982, subpart K).

(2) HUD verification method: MTCS report—Shows percent of tenant rent and family's share of the rent to owner calculations that are incorrect based on data sent to HUD by the PHA on Forms HUD–50058. The MTCS data used for verification cover only voucher program tenancies, and do not include rent calculation discrepancies for manufactured home owner rentals of manufactured home spaces for proration of assistance under the noncitizen rule.

* * * * *

(l) *Initial unit inspections.* (1) This indicator shows whether newly leased units pass HQS inspection within the time period required. This includes both initial and turnover inspections for the PBV program. (24 CFR 982.305 and 983.103(b) through (d)).

(2) HUD verification method: MTCS report—Shows percent of newly leased units where the beginning date of the assistance contract is before the date the unit passed the initial unit inspection or, if the PHA employed the PHA initial inspection option for non-life-threatening deficiencies or alternative inspections, the timing requirements for the applicable PHA initial inspection option.

(3) Rating:

(i) 98 to 100 percent of newly leased units passed HQS inspection within the time period required. 5 points.

(ii) Fewer than 98 percent of newly leased units passed HQS inspection within the time period required. 0 points.

(m) *Periodic HQS inspections.* (1) This indicator shows whether the PHA has met its periodic inspection requirement for its units under contract (24 CFR 982.405 and 983.103(e)).

* * * * *

(3) Rating:

(i) Fewer than 5 percent of periodic HQS inspections of units under contract are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all periodic HQS inspections of units under contract are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all periodic HQS inspections of units under contract are more than 2 months overdue. 0 points.

* * * * *

(p) * * *

(1) This indicator shows whether voucher holders were successful in leasing units with voucher assistance. This indicator applies only to PHAs that established success rate payment standard amounts in accordance with § 982.503(f) prior to June 6, 2024.

* * * * *

(3) * * *

(i) * * *

(B) The proportion of families issued rental vouchers that became participants in the program during the six month period utilized to determine eligibility for success rate payment standards under § 982.503(f) plus 5 percentage points; and

* * * * *

## PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 128. The authority for part 985 continues to read as follows:

**Authority:** 25 U.S.C. 4101 *et seq.;* 42 U.S.C. 3535(d).

### § 1000.302 [AMENDED]

■ 129. In § 1000.302, amend the definition of ''Section 8 unit'' by removing the words ''certificates, vouchers,'' and adding, in their place, the word ''vouchers''.

**Damon Smith,**

*General Counsel.*

[FR Doc. 2024–08601 Filed 5–6–24; 8:45 am]

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## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR part 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AWP CA E5 Turlock, CA [New]**

Turlock Municipal Airport, CA
(Lat. 37°29′03″ N, long. 120°41′50″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport, within a 7.3-mile radius of the airport from the 352° bearing clockwise to the 096° bearing, and within 2 miles either side of the airport's 046° bearing extending to 8.2 miles northeast of the airport.

* * * * *

Issued in Des Moines, Washington, on May 20, 2024.

**B.G. Chew,**

*Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2024–11434 Filed 5–24–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 5, 8, 42, 50, 91, 92, 93, 247, 290, 882, 888, 891, 903, 908, 943, 945, 960, 972, 982, 983, 985, and 1000

**[Docket No. FR–6092–C–04]**

**RIN 2577–AD06**

## Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes; Correction

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

**ACTION:** Final rule, correction.

**SUMMARY:** The Department of Housing and Urban Development is correcting a final rule entitled, ''Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes'' that published on May 7, 2024.

**DATES:** Effective: June 6, 2024.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this correction, contact Allison Lack, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10238, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

**SUPPLEMENTARY INFORMATION:** On May 7, 2024, HUD published a final rule amending HUD's regulations to implement changes to the Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) programs made by the Housing Opportunity Through Modernization Act of 2016 (HOTMA) (89 FR 38224) (FR Doc. 2024–08601). In reviewing the May 7, 2024, final rule, HUD identified five inadvertent errors.

First, in the final rule, certain amendments are delayed indefinitely. Initially, in the **DATES** heading, HUD incorrectly identified the delayed amendment to 24 CFR 983.157 as located in instruction 100. The correct instruction is 99.

Second, amendatory instruction 64 incorrectly states the existing regulatory text in § 982.402(b)(2) as ''housing quality standards (HQS)''. In fact, the text to be replaced reads ''housing quality standards''.

Third, § 983.10 incorrectly contains paragraph (b)(3) twice, each with the same text. This paragraph should only be included once.

Fourth, § 983.51(e)(2) incorrectly omits paragraph (ii) and instead contains two paragraphs designated ''(iii)'', each with the same text. The first of the two paragraphs should be designated as paragraph (ii) and read: ''The project meets the environmental review requirements at § 983.56, if applicable; and''.

Fifth, the revisions to part 983, subpart D incorrectly excluded § 983.157, which should have been removed. A subsequent instruction correctly adds a new § 983.157, although it is delayed pending future publication in the **Federal Register**.

### Correction

Accordingly, FR Doc. 2024–08601, Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes, published on May 7, 2024, (89 FR 38224) is corrected as follows:

1. On page 38224, in the first column, in the **DATES** section, the first paragraph is corrected to read as follows:

*Effective date:* June 6, 2024, except the following sections, which are delayed indefinitely: instruction 69, § 982.451(c); instruction 98, § 983.154(g) and (h); instruction 99, § 983.157; and instruction 103, § 983.204(e).

**§ 982.402 [CORRECTED]**

■ 2. On page 38296, in the third column, in § 982.402, amendatory instruction 64 is corrected to read as follows:

■ 64. Amend § 982.402(b)(2) by removing the words ''housing quality standards'' and adding, in their place, the term ''HQS''.

**§ 983.10 [CORRECTED]**

■ 3. On page 38308, in the second column, in § 983.10, remove the second paragraph (b)(3).

■ 4. On page 38310, in the third column, correct § 983.51 by removing the first of the two paragraphs (e)(2)(iii), and adding, in its place, a paragraph (e)(2)(ii) to read as follows:

**§ 983.51 Proposal and project selection procedures.**

(e) * * *

(2) * * *

(ii) The project meets the environmental review requirements at § 983.56, if applicable;

**Subpart D [Corrected]**

■ 5. On page 38318, in the third column, amendatory instruction 97 is corrected to read as follows:

■ 97. Amend subpart D by:

■ a. Revising § 983.151 through § 983.156; and

■ b. Removing § 983.157.

The revisions read as follows:

**Allison Lack,**

*Assistant General Counsel for Regulations.*

[FR Doc. 2024–11629 Filed 5–24–24; 8:45 am]

**BILLING CODE 4210–67–P**

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Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5874.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Andrew Othole Memorial Airport, Zuni, NM, to support IFR operations at this airport.

**History**

The FAA published an NPRM for Docket No. FAA–2025–0632 in the **Federal Register** (90 FR 24355; June 10, 2025) proposing to establish Class E airspace at Zuni, NM. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

**Incorporation by Reference**

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.
and adjustment are therefore included in this action.

**The Rule**

This action modifies 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface to within an 8.5-mile radius of Andrew Othole Memorial Airport, Zuni, NM. This action is the result of instrument procedures being developed for this airport to support IFR operations.

**Regulatory Notices and Analyses**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1G, ''FAA National Environmental Policy Act Implementing Procedures,'' paragraph B–2.5(a), which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph B–2.5(k), which categorically excludes from further environmental impact review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**Lists of Subjects in 14 CFR 71**

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AWP NM E5 Zuni, NM [Establish]**

Andrew Othole Memorial Airport, NM
(Lat 35°03′38″ N, long 108°56′15″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Andrew Othole Memorial Airport, and within 2 miles each side of the 069° bearing from the airport extending from the 8.5-mile radius to 14.3 miles northeast of the airport, and within 2 miles each side of the 249° bearing from the airport extending from the 8.5-mile radius to 15.9 miles southwest of the airport.

* * * * *

Issued in Fort Worth, Texas, on December 1, 2025.

**Jerry J. Creecy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2025–22145 Filed 12–5–25; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 5, 888, 903, 982, 983, and 985

**[Docket No. FR–6092–F–05]**

**RIN 2577–AD06**

## Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes; Technical Amendments

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

**ACTION:** Final rule; technical amendments.

**SUMMARY:** In reviewing HUD's May 7, 2024, final rule Housing Opportunity

Through Modernization Act of 2016-Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes, HUD discovered minor errors and provisions that would benefit from clarification. This rule corrects those technical errors, updates references, and makes clarifying amendments.

**DATES:** This rule is effective January 7, 2026.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this correction, contact Ryan Jones, Director, Housing Voucher Management and Operations Division, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20011; telephone number 202–708–1112 (this is not a toll-free number); email *HOTMAVoucher@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On May 7, 2024, HUD published a final rule amending HUD's regulations to implement changes to the Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) programs made by the Housing Opportunity Through Modernization Act of 2016 (HOTMA) (89 FR 38224) (FR Doc. 2024–08601) (HOTMA Voucher Final Rule). The HOTMA Voucher Final Rule intended to reduce the burden on public housing agencies, by either modifying requirements or simplifying and clarifying existing regulatory language. On May 28, 2024, HUD published a Correction addressing five errors made in the HOTMA Voucher Final Rule. In reviewing the HOTMA Voucher Final Rule and the Correction, HUD identified additional inadvertent errors as well as provisions with unclear language. This rule corrects the inadvertent errors and clarifies regulatory requirements.

## II. Changes Made in This Final Rule

The following is an overview of the changes made to 24 CFR parts 5, 888, 903, 982, 983, and 985 in this final rule.

### *§ 5.100 and § 5.504 Definitions of Responsible Entity*

This final rule revises the definition of ''Responsible entity'' in part 5, subparts A and E. In the HOTMA Voucher Final Rule, HUD intended to amend the definitions to remove reference to the certificate program only. However, HUD inadvertently added a reference to the Section 235 Program in § 5.100 and removed references to several programs in § 5.504. This final rule corrects the definitions.

### *§ 888.113 Fair Market Rents for Existing Housing: Methodology*

The HOTMA Voucher Final Rule revised § 888.113(h)(1) to clarify that the PHA and owner may mutually agree to apply Small Area fair market rents (Small Area FMRs) to a PBV project where the project was selected before ''either or both'' the Small Area FMR designation and the PHA administrative policy. Prior to the HOTMA Voucher Final Rule, the regulatory text only stated ''both'' which inadvertently created confusion with respect to projects selected between the two events (the Small Area FMR designation and the PHA administrative policy extending Small Area FMRs to future PBV projects). HUD made the technical correction to paragraph (h)(1) to clarify that if the PHA is applying the Small Area FMRs to future PBV projects, the PHA may also establish a policy to extend the use of Small Area FMRs to current PBV projects, including those projects selected after the Small Area FMR designation but prior to the effective date of the PHA administrative policy, if the owner is willing to do so.

HUD has subsequently realized that § 888.113(h)(3) and (4) also require technical corrections. The correction in paragraph (h)(3)(ii) reflects the changes made in the HOTMA Voucher Final Rule. A PHA administering an HCV program in either a metropolitan area not subject to the application of Small Area FMRs or in a non-metropolitan area for which HUD publishes Small Area FMRs may now choose to use Small Area FMRs after notification to HUD; HUD is no longer required to approve such PHA requests to voluntarily use Small Area FMRs, per § 888.113(c)(3).

The correction in § 888.113(h)(4) clarifies that the term ''effective date'' in regard to the PHA administrative policy means the effective date of the policy in the PHA Administrative Plan that has been formally adopted by the PHA Board of Commissioners or other authorized PHA officials in accordance with 24 CFR 982.54(a). The current regulatory language has created confusion because it does not contemplate a situation where the PHA Board adopts the PBV Small Area FMR policy but provides that the policy does not go into effect until a specific date in the future. For example, the Board adopts the revision to the Administrative Plan on September 7, 2025, but provides in the revised Administrative Plan that the effective date of the new PBV Small Area FMR policy is January 1, 2026. HUD is concerned the existing text could be misconstrued to mean HUD is prohibiting the Board from establishing a future effective date beyond the actual date upon which Board formally adopted the proposed PBV Small Area FMR revision to the Administrative Plan, which was not the intent and which is clarified in this final rule.

### *§ 903.7 What information must a PHA provide in the Annual Plan?*

In this final rule, HUD is simplifying the language of § 903.7(b)(3) by putting a sentence into list format.

### *§ 982.205 Waiting List: Different Programs*

Section 982.205(a)(2)(i) and (ii) are amended to clarify that the reference to the PBV waiting list includes any owner-maintained waiting list. This clarifying language was added throughout the PBV regulations in the HOTMA Voucher Final Rule but was inadvertently left out of the HCV regulations. The correction does not add any new requirements.[1]

### *§ 982.405 and § 982.406 Consistent Inclusion of Tenant-Based Lease Protection Provision and Clarifying Timing*

24 CFR 982.404(d) was added in the HOTMA Voucher Final Rule to explain remedies for Housing Quality Standards (HQS) deficiencies identified during inspections other than the initial inspection, because initial inspections have separate requirements; generally, the unit must have no deficiencies before the family can move to and be assisted in the unit, but the PHA may use the alternative inspection option, the non-life-threatening (NLT) deficiencies option, or both (24 CFR 982.405(j), 982.406(e)–(f)) to enable the assisted tenancy to begin earlier. In creating this regulatory structure, HUD did not include a provision mirroring 24 CFR 982.404(d)(3), respecting families' protection from and options for lease termination during a period of withholding or abatement, in each of the paragraphs governing the inspection flexibilities for tenant-based HCV. The inspection flexibilities are governed by parallel provisions in the PBV program, and all of those PBV provisions (24 CFR

[1] *See* 983.251(c)(7)(ix) ''All HCV waiting list administration requirements that apply to the PBV program (24 CFR part 982, subpart E, other than 24 CFR 982.201(e), 982.202(b)(2), and 982.204(d)) apply to owner-maintained waiting lists.''

983.103(c)(2)(vi), (c)(3)(viii), and (c)(4)(vi)) do contain a provision mirroring 24 CFR 982.404(d)(3). The omission from 24 CFR 982.405(j), 982.406(e)–(f) is corrected in this final rule by the addition of new paragraphs at §§ 982.405(j)(7), 982.406(e)(7), and 982.406(f)(7). The new paragraphs do not add new requirements. They mirror the existing § 982.404(d)(3) and are included in §§ 982.405–406 for clarity and consistency.

Additionally, HUD is clarifying the description of the PHA policy on termination after a prolonged period of deficiencies in §§ 982.405(j)(6)(ii), 982.406(e)(6)(ii), and 982.406(f)(6)(ii) by changing ''The date by which'' to ''The number of days after which''. This language mirrors the project-based voucher regulations. HUD believes the new language is clearer and also avoids implying by differing language that the PHA is required to enact different policies depending on the type of inspection flexibility and program (tenant-based vs. project-based).

*§ 983.3 PBV Definitions*

In the Final HOTMA Voucher Rule, HUD made changes to the definitions of ''independent entity'' in § 982.4 but failed to make the mirroring changes to § 983.3. The definitions should be the same. The § 983.3 definitions should read: ''*Independent entity.* See 24 CFR 982.4''.

*§ 983.103 Inspecting Units*

In the Final HOTMA Voucher Rule, HUD established provisions in § 983.103(c) for initial inspections of existing housing using the NLT option, the alternative inspections option, and the use of both of the foregoing options together. In doing so, each option is described separately in paragraphs (c)(2), (c)(3), and (c)(4), with each laying out the process to execute the HAP contract, inspect and correct deficiencies, occupy, make housing assistance payments (HAP), and remedy continued deficiencies for the PBV units under the option. In some cases, a provision expressly referencing an aspect of the process was unintentionally omitted from one or two options or differed from option to option in a manner that could be misinterpreted as substantively different requirements. HUD is resolving the discrepancies here to ensure the regulations accurately reflect the intended consistency between the three options on matters that are applicable to more than one option. These revisions do not substantively change the regulations, but rather provide consistent verbiage and structure to prevent confusion when following the regulatory requirements.

*§ 983.208 Condition of Contract Units*

In codifying provisions of HOTMA that had not previously been implemented, the HOTMA Voucher Final Rule was intended to align corresponding PBV and HCV regulations, except where a provision was inapplicable to one of the programs. Consequently, § 983.208(d)(3) should mirror § 982.404(d)(3) to require families to notify both the PHA and owner of termination of tenancy. Section 983.208(d)(3) is amended here to align with the HCV provision at § 982.404(d)(3), which correctly reflects that notification to the PHA is necessary for the PHA to continue a family's assistance when the family terminates its assisted tenancy in a unit to which HAPs are abated due to HQS deficiencies. HUD believes the public would have expected reference to this necessary step to comprehensively codify this operation in the regulatory text and makes this change accordingly.

*§ 983.212 Substantial Improvement to Units Under a HAP Contract*

This final rule amends § 983.212(a)(3)(iii)(C) to add clarifying language which matches the corresponding provision in § 983.157(g)(6)(iii)(C). HUD is also correcting a reference from paragraph (b)(1) to (b)(6).

*§ 983.260 Overcrowded, Under-Occupied, and Accessible Units*

24 CFR 983.260(c)(1) was intended to only apply where a PHA made an offer of continued housing assistance under § 983.260(b)(1), not where a PHA takes action under § 983.260(b)(2). While this limited applicability is implied by the inclusion of different procedural requirements in § 983.260(b)(2), this rule adds clarifying language to § 983.260(c)(1) to ensure there is no ambiguity regarding the inapplicability of the provision to actions taken under § 983.260(b)(2).

*Proposal or Project Selection Date—§§ 983.3, 983.51, and 983.204*

This final rule updates language to ensure the consistent use of the term ''the proposal or project selection date.'' Additionally, § 983.3(b) is amended to use this term instead of ''the date of selection.'' §§ 983.51 and 983.204 are amended to clarify requirements that apply to both the proposal or project selection date and/or to switch the order of the words ''project'' and ''proposal'' for consistent use of the term ''the proposal or project selection date''.

*Substantial Improvement Corrections—§§ 983.3 and 983.212*

This final rule amends §§ 983.3(b) and 983.212(a) to clarify the distinction between completing substantial improvement and development activity for units under a HAP contract. The intention of the HOTMA Voucher Final Rule, as stated in its preamble, was to create separate, distinct processes for completing development activity versus substantial improvement. The current language of § 983.212 provides that development activity is an exception to the option to conduct substantial improvement which could be interpreted as allowing the same work to qualify as both, which would result in the work being disallowed under either process. This final rule clarifies the two distinct processes for completing substantial improvements and development activity for units under a HAP contract.

*Technical Corrections*

HUD is also making a number of technical corrections in this final rule. In § 983.51, HUD is adding the word ''and'' between paragraphs (e)(2)(ii) and (iii) to clarify that the paragraphs are a list. In § 983.59, HUD is removing the duplicative word ''or'' from paragraph (b)(2)(ii) in the list made up of paragraphs (b)(2)(i)–(iv) and removing the capitalization of the word ''for'' in paragraphs 983.59(b)(1)(iii) and (b)(2)(iii)(C).

In § 983.153(c)(1), HUD is updating an incorrect reference from 983.157(a) to 983.157(b)(2) to correctly cite the paragraph referring to development activity occurring before an Agreement or HAP contract. HUD is also updating a reference in § 983.262(d)(3)(iii) on supporting services from paragraph(c)(2) to (d)(3)(ii). This final rule will correct the citation in § 985.3 from ''2 CFR Subpart F'' to ''2 CFR part 200, subpart F''.

In § 982.4 and § 982.516, HUD is correcting paragraph numbering.

Finally, HUD is correcting words that were inadvertently left out of paragraphs or wrongly included. Section 983.103(c)(4) is missing the word ''inspection''. Section 983.206(b)(3) incorrectly referred to ''tenant-based utilities'' when it should refer to ''tenant-paid utilities''.

## III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comments before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. However, part 10 provides for exceptions to the general rule where

HUD finds that public comment would be ''impracticable, unnecessary or contrary to the public interest'' (24 CFR 10.1).

HUD finds that good cause exists to publish this final rule for effect without first soliciting public comments. The amendments made in this rule are technical, to provide further clarity, and correct grammar and references. Furthermore, HUD believes that the public comments submitted in response to the HOTMA Voucher Final Rule on these topics, and HUD's responses to public comments provide HUD with a solid basis to make the conforming changes in this final rule.

## IV. Findings and Certifications

*Regulatory Review—Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. In this final rule, HUD is making technical corrections and clarifying amendments to avoid potential confusion. The changes are technical in nature; HUD is not introducing any new regulatory changes or rationales that differ in substance from the HOTMA Voucher Final Rule. This rule was not subject to OMB review. This rule is not a ''significant regulatory action'' as defined in Section 3(f) of Executive Order 12866 and is not an economically significant regulatory action.

*Regulatory Costs—Executive Order 14192*

Executive Order 14192 (Unleashing Prosperity Through Deregulation) requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. This interim final rule reduces regulatory burden because it makes amendments clarifying existing regulations.

*Federalism—Executive Order 13132*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule makes clarifying amendments. It does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor does it preempt state law within the meaning of the Executive Order.

*Environmental Impact*

In assessing the environmental impact of the HOTMA Voucher Final Rule, HUD prepared a Finding of No Significant Impact (FONSI) in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online at *www.regulations.gov*. Accordingly, under 24 CFR 50.19(c)(4) this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

**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. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

**List of Subjects**

*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 888*

Grant programs—housing and community development, rent subsidies.

*24 CFR Part 903*

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 982*

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

*24 CFR Part 983*

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

*24 CFR Part 985*

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

For the reasons stated in the preamble, HUD amends 24 CFR parts 5, 888, 903, 982, 983, and 985 as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.;* 34 U.S.C. 12471 *et seq.;* Sec. 327, Pub. L. 109–115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

■ 2. Amend § 5.100 by revising and republishing the definition of ''Responsible entity'' to read as follows:

**§ 5.100 Definitions.**

* * * * *

*Responsible entity* means:

(1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based voucher program (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), the PHA administering the program under an ACC with HUD.

(2) For all other Section 8 programs, the Section 8 project owner.

* * * * *

■ 3. Amend § 5.504 by revising and republishing the definition of ''Responsible entity'' to read as follows:

**§ 5.504 Definitions.**

* * * * *

*Responsible entity* means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigrations status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

(1) For the Section 235 Program, the mortgagee.

(2) For Public Housing, the Section 8 tenant-based assistance, the Section 8 project-based voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

(3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

* * * * *

## PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

■ 4. The authority citation for part 888 continues to read as follows:

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

■ 5. Amend § 888.113 by revising paragraphs (h)(3)(ii) and (4) to read as follows:

**§ 888.113 Fair market rents for existing housing: Methodology.**

* * * * *

(h) * * *

(3) * * *

(ii) The date that the PHA notified HUD it will use Small Area FMRs for its HCV program, as applicable.

(4) For purposes of this section, the term ''effective date'' when used in reference to the PHA administrative policy means the effective date of the policy in the PHA Administrative Plan that has been formally adopted by the PHA Board of Commissioners or other authorized PHA officials in accordance with 24 CFR 982.54(a).

* * * * *

## PART 903—PUBLIC HOUSING AGENCY PLANS

■ 6. The authority citation for part 903 continues to read as follows:

**Authority:** 42 U.S.C. 1437c; 42 U.S.C. 1437c–1; Pub. L. 110–289; 42 U.S.C. 3535d.

■ 7. Amend § 903.7 by revising paragraph (b)(3) to read as follows:

**§ 903.7 What information must a PHA provide in the Annual Plan?**

* * * * *

(b) * * *

(3) *Other admissions policies.* The PHA's admission policies that include any other PHA policies that govern eligibility, selection, and admissions for the public housing (see part 960 of this title), tenant-based assistance (see part 982, subpart E of this title), and project-based assistance (see part 982, subpart E of this title except as provided in § 983.3, and part 983, subpart F) programs. (The information requested on site-based waiting lists and deconcentration is applicable only to public housing.)

* * * * *

## PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

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

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

**§ 982.205 [Amended]**

■ 9. Amend § 982.205, in paragraphs (a)(2)(i) and (ii), by removing the text ''project-based voucher program or moderate rehabilitation'', wherever it appears, and adding, in its place, the text ''project-based voucher program (including any owner-maintained waiting list), or moderate rehabilitation''.

■ 10. Amend § 982.405 by:

■ a. In paragraph (j)(6)(ii), removing the text ''The date by which'' and adding, it its place, the text ''The number of days after which''; and

■ b. Adding paragraph (j)(7).

The addition reads as follows:

**§ 982.405 PHA unit inspection.**

* * * * *

(j) * * *

(7) The owner may not terminate the tenancy of the family due to the withholding or abatement of assistance under this paragraph (j). During the period that assistance is abated, the family may terminate the tenancy by notifying the owner and the PHA. If the family chooses to terminate the tenancy, the HAP contract will automatically terminate on the effective date of the tenancy termination or the date the family vacates the unit, whichever is earlier. The PHA must promptly issue the family its voucher to move.

■ 11. Amend § 982.406 by:

■ a. In paragraphs (e)(6)(ii), removing the text ''The date by which'' and adding, it its place, the text ''The number of days after which'';

■ b. Adding paragraph (e)(7);

■ c. In paragraph (f)(6)(ii), removing the text ''The date by which'' and adding, it its place, the text ''The number of days after which''; and

■ d. Adding paragraph (f)(7).

The additions read as follows

**§ 982.406 Use of alternative inspections.**

* * * * *

(e) * * *

(7) The owner may not terminate the tenancy of the family due to the withholding or abatement of assistance under this paragraph (e). During the period that assistance is abated, the family may terminate the tenancy by notifying the owner and the PHA. If the family chooses to terminate the tenancy, the HAP contract will automatically terminate on the effective date of the tenancy termination or the date the family vacates the unit, whichever is earlier. The PHA must promptly issue the family its voucher to move.

* * * * *

(f) * * *

(7) The owner may not terminate the tenancy of the family due to the withholding or abatement of assistance under this paragraph (f). During the period that assistance is abated, the family may terminate the tenancy by notifying the owner and the PHA. If the family chooses to terminate the tenancy, the HAP contract will automatically terminate on the effective date of the tenancy termination or the date the family vacates the unit, whichever is earlier. The PHA must promptly issue the family its voucher to move.

* * * * *

**§ 982.516 [Amended]**

■ 12. Amend § 982.516 by redesignating paragraphs (f)(i) and (ii) as paragraphs (f)(1) and (2).

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

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

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

■ 14. In § 983.3, amend paragraph (b) by:

■ a. Revising the definition of ''Independent entity'';

■ b. In the definition of ''Newly constructed housing'', removing the text ''after the date of selection for'' and adding, in its place, the text ''after the proposal or project selection date for''; and

■ c. Revising the introductory text of the definition of ''Substantial improvement''.

The revisions read as follows:

**§ 983.3 PBV definitions.**

* * * * *

(b) * * *

*Independent entity.* See 24 CFR 982.4.

* * * * *

*Substantial improvement.* One of the following activities undertaken at a time beginning from the proposal submission date (for projects subject to competitive selection) or from the project selection date (for projects excepted from competitive selection), or undertaken during the term of the PBV HAP contract, except that development activity performed for rehabilitated housing or newly constructed housing shall not also qualify as substantial improvement:

* * * * *

**§ 983.51 [Amended]**

■ 15. Amend § 983.51 by:

■ a. Adding the word ''and'' after the semicolon at the end of paragraph (e)(2)(ii);

■ b. In paragraph (f)(4), removing the text ''project or proposal'' wherever it appears, and adding, in its place, the text ''proposal and project'', and removing the citation to ''983.56(c)'' and adding, in its place, a citation to ''§ 983.56(c)'';

■ c. In the first sentence of paragraph (h), removing the text ''project'' wherever it appears, and adding, in its place, the text ''proposal or project'';

■ d. In paragraph (i), removing the text ''proposal'', and adding, in its place, the text ''proposal or project'';

■ e. In paragraph (j), removing the text ''projects or owners'' in the first sentence and adding, in its place, the text ''proposals, projects, or owners'', and removing the text ''owner proposal'' in the second sentence and adding, in its place, the text ''proposal or project''; and

■ f. In paragraph (k), removing the text ''project'' and adding, in its place, the text ''proposal or project''.

■ 16. Amend § 983.59 by revising paragraph (b)(1)(iii), removing the word ''or'' after the semicolon at the end of paragraph (b)(2)(ii), and revising paragraph (b)(2)(iii)(C) to read as follows:

**§ 983.59 Units excluded from program cap and project cap.**

* * * * *

(b) * * *

(1) * * *

(iii) Housing for the Elderly (Section 202 of the Housing Act of 1959);

* * * * *

(2) * * *

(iii) * * *

(C) Housing for the Elderly (Section 202 of the Housing Act of 1959);

* * * * *

■ 17. Amend § 983.103 by:

■ a. Revising the second sentence of paragraph (c)(2)(vi), the last sentence of paragraph (c)(3)(ii), and the second sentence of paragraph (c)(3)(iii);

■ b. In paragraph (c)(3)(v), adding a sentence after the first sentence;

■ c. In paragraph (c)(3)(vi), removing the text ''the date by which'' and adding, in its place, the text ''the number of days after which''; and

■ d. Revising the second sentence of paragraph (c)(3)(viii), heading of paragraph (c)(4), paragraph (c)(4)(i), the first sentence of paragraph (c)(4)(ii), paragraph (c)(4)(iii), the last sentence of paragraph (c)(4)(iv), the third and fourth sentences of paragraph (c)(4)(v), and the first sentence of paragraph (c)(4)(vi) introductory text.

The revisions and addition read as follows:

**§ 983.103 Inspecting units.**

* * * * *

(c) * * *

(2) * * *

(vi) * * * During the period the assistance is abated, a family may terminate the tenancy by notifying the owner and the PHA, and the PHA must provide the family tenant-based assistance. * * *

(3) * * *

(ii) * * * A family referred from the waiting list may decline to accept an offered unit due to unit conditions and remain on the waiting list.

(iii) * * * If the family reports a deficiency to the PHA prior to the PHA's inspection, the PHA must inspect the unit within the time period required under paragraph (f) of this section or within 30 days of the proposal or project selection date, whichever time period ends first.

* * * * *

(v) * * * The PHA must not refer families from the PBV waiting list to occupy units with deficiencies. * * *

* * * * *

(viii) * * * During the period the assistance is abated, a family may terminate the tenancy by notifying the owner, and the PHA must provide the family tenant-based assistance. * * *

(4) *Initial inspection—use of both the NLT and alternative inspection options.* * * *

(i) If the owner agrees to both the NLT option and the alternative inspection option, then the PHA notifies all families (any eligible in-place family (§ 983.251(d)) or any family referred from the PBV waiting list that will occupy the unit before the PHA conducts the HQS inspection) that both the NLT option and the alternative inspection option will be used for the family's unit. As part of this notification, the PHA must provide the family with the PHA's list of HQS deficiencies that are considered life-threatening. A family referred from the waiting list may decline to move into a unit due to unit conditions and remain on the waiting list. Following inspection (see paragraph (c)(4)(ii) of this section), the PHA must provide any family referred from the PBV waiting list that will occupy a unit with non-life-threatening deficiencies a list of the non-life-threatening deficiencies identified by the initial HQS inspection and an explanation of the maximum amount of time the PHA will withhold HAP before abating assistance if the owner does not complete the repairs within 30 days. The PHA must also inform the family that if the family accepts the unit and the owner fails to make the repairs within the cure period, which may not exceed 180 days from the effective date of the HAP contract, the PHA will remove the unit from the HAP contract, and the family will be issued a voucher to move to another unit in order to receive voucher assistance. If the PHA's Administrative Plan provides that the PHA will terminate the PBV HAP contract if the owner fails to correct deficiencies in any unit in the project within the cure period, then, following inspection, the PHA must also provide the notice described in this paragraph to families referred to units without any deficiencies. The family referred from the waiting list may choose to decline the unit and remain on the waiting list.

(ii) The PHA executes the HAP contract with the owner on the basis of an inspection in the previous 24 months using an alternative inspection that meets the requirements of 24 CFR 982.406. * * *

(iii) The PHA may not commence housing assistance payments to the owner until the PHA has inspected all the units under the HAP contract.

(iv) * * * Once the deficiencies are corrected, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(v) * * * The owner must correct all life-threatening deficiencies within no more than 24 hours of notification from the PHA. For other deficiencies, the owner must correct the deficiency within no more than 30 calendar days (or any PHA-approved extension) of notification from the PHA. * * *

(vi) The owner may not terminate the tenancy of a family because of the withholding or abatement of assistance payments. * * *

* * * * *

**§ 983.153 [Amended]**

■ 18. In § 983.153, amend paragraph (c)(1) by removing the citation ''983.157(a)'' and adding in its place the citation ''983.157(b)(2)''.

**§ 983.204 [Amended]**

■ 19. In § 983.204, amend paragraph (b) by removing the text ''owner proposal'' and adding, in its place, the text ''proposal or project''.

**§ 983.206 [Amended]**

■ 20. In § 983.206, amend paragraph (b)(3) by removing the text ''tenant-based utilities'' and adding, in its place, the text ''tenant-paid utilities''.

■ 21. Amend § 983.208 by:

■ a. Revising the heading of paragraph (a).

■ b. In paragraph (d)(3), removing the text ''the owner'' and adding, in its place, the text ''the owner and the PHA''.

**§ 983.208 Condition of contract units.**

(a) *Owner maintenance and operation.* * * *

* * * * *

■ 22. Amend § 983.212 by:

■ a. Revising the introductory text of paragraph (a);

■ b. In paragraph (a)(3)(iii)(C), removing the text ''in the case of an absolute'' and adding, in its place, the text ''in the case of an owner-maintained waiting list, must place the family on the PBV waiting list with an absolute''; and

■ c. In paragraph (a)(4), removing the reference to ''(b)(1)'' and adding, in its place, a reference to ''(b)(6)''.

The revision reads as follows:

**§ 983.212 Substantial improvement to units under a HAP contract.**

(a) *Substantial improvement to units under a HAP contract.* The owner may undertake substantial improvement on a unit currently under a HAP contract if approved to do so by the PHA. The owner may request PHA approval no earlier than the effective date of the HAP contract. (All work occurring on a unit in a project that is under a HAP contract subject to a rider in accordance with § 983.157 is development activity and is not subject to this section.) The following conditions apply:

* * * * *

**§ 983.260 [Amended]**

■ 23. In § 983.260, amend the introductory text of paragraph (c)(1) by removing the text ''voucher program'' and adding, in its place, the text ''voucher program in accordance with paragraph (b)(1) of this section''.

**§ 983.262 [Amended]**

■ 24. In § 983.262, amend paragraph (d)(3)(iii) by removing the reference to ''paragraph (c)(2) of this section'' and adding, in its place, a reference to ''paragraph (d)(3)(ii) of this section''.

## PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP) AND SMALL RURAL PHA ASSESSMENTS

■ 25. The authority citation for part 985 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437z–10, and 3535(d).

**§ 985.3 Indicators, HUD verification methods and ratings.**

■ 26. In § 985.3, amend the second paragraph of the undesignated introductory text by removing the reference to ''2 CFR Subpart F'' and adding, in its place, a reference to ''2 CFR part 200, subpart F''.

**Andrew Hughes,**

*Deputy Secretary.*

[FR Doc. 2025–22157 Filed 12–5–25; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2025–1048]**

## Special Local Regulations; Marine Events Within the Southeast Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a special local regulation for the San Juan Harbor Christmas Boat Parade on December 13, 2025, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Southeast Coast Guard District identifies the regulated area for this event in San Juan, PR. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area unless authorized by the Coast Guard Patrol Commander or a designated representative.

**DATES:** The regulations in 33 CFR part 100.701 will be enforced for the location identified in table 1 to § 100.701, paragraph (a), Item 11, from 6 p.m. through 8 p.m. on December 13, 2025.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Lieutenant Commander Rachel E. Thomas, Sector San Juan Waterways Management Division, U.S. Coast Guard; telephone (571) 613–1417, email Lieutenant Commander *Rachel.E.Thomas@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce special local regulations in 33 CFR 100.701 for the San Juan Harbor Christmas Boat Parade regulated area identified in table 1 to § 100.701, paragraph (a), Item 11, from 6 p.m. until 8 p.m. on December 13, 2025. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Seventh Coast Guard District, § 100.701, paragraph (a), Item 11, specifies the location of the regulated area for the San Juan Harbor Christmas Boat Parade, which encompasses portions of the San Juan Harbor located in San Juan, PR. Under the provisions of 33 CFR 100.701(c) all persons and vessels are prohibited from entering the regulated area, except those persons and vessels participating in the event, unless they receive permission to do so from the Coast Guard Patrol Commander, or designated representative.

Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, impede the transit of festival participants or official patrol vessels or enter the regulated area without approval from the Coast Guard Patrol Commander or a designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notice of the regulated area via Local Notice to Mariners, Marine Safety Information Bulletins, Broadcast Notice to Mariners, and on-scene designated representatives.

**Luis J. Rodríguez,**

*Captain, U.S. Coast Guard, Captain of the Port San Juan.*

[FR Doc. 2025–22196 Filed 12–5–25; 8:45 am]

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