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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 888, 982, 983, and 985

[Docket No. FR-6092-P-01]

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:** Proposed rule.

**SUMMARY:** The Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law on July 29, 2016. HOTMA made numerous changes that affect either the Housing Choice Voucher (HCV) tenant-based program or the Project-Based Voucher (PBV) program, or both. Among other changes, HOTMA established alternatives to HUD's housing quality standard inspection requirements, it established a statutory definition of public housing agency (PHA)-owned housing, and it amended several elements of both the HCV and PBV programs, in the latter case ranging from owner proposal selection procedures to how participants are selected. In addition to implementing these HOTMA provisions, HUD has included regulatory changes in this proposed rule that are intended to reduce the burden on public housing agencies, by either modifying requirements or simplifying and clarifying existing regulatory language.

**DATES:** Comment Due Date: **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov). To receive consideration as public comments, comments must be submitted through one of two methods, specified below. All submissions must refer to the above docket number and title.

**1. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**2. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

**FOR FURTHER INFORMATION CONTACT:** Email [HOTMAquestions@hud.gov](mailto:HOTMAquestions@hud.gov) with your questions about this proposed rule.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 29, 2016, HOTMA was signed into law (Pub. L. 114–201, 130 Stat. 782). HOTMA makes numerous 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). HUD issued a notice in the

Federal Register on October 24, 2016, at 81 FR 73030, announcing to the public which of the statutory changes made by HOTMA could be implemented immediately and which statutory changes required further guidance from HUD before owners, PHAs, or other grantees may use the new statutory provisions.

On January 18, 2017, at 82 FR 5458, HUD published a second notice, making multiple HOTMA provisions effective and requesting comments. Several of the comments pointed out the need for technical corrections or clarifications to the January 18, 2017, implementation document. HUD published a document on July 14, 2017, at 82 FR 32461, making several technical corrections and clarifications. HUD also received comments recommending changes that were not technical corrections or clarifications, but rather suggested alternative approaches to implementing the HOTMA provisions. The January 18, 2017, FR notice, as amended by the July 14, 2017, FR notice, is referred to as the “FR Implementation Notice” throughout the preamble of this proposed rule.

In the fall of 2017, HUD published three notices (Notices PIH 2017-18, PIH 2017–20, and PIH 2017–21) that provide guidance on HCV provisions included in the FR Implementation Notice. Notice PIH 2017-18 provides guidance on the HOTMA provision related to the housing assistance payment calculation for manufactured home space rentals, while Notices PIH 2017-20 and 2017-21 cover the implemented HOTMA Housing Quality Standard (HQS) inspection and PBV provisions, respectively.

This proposed rule does a number of things. First, it proposes codification of the HOTMA provisions that have been implemented via notices published in the Federal Register as described above, taking into account public comments received in response to HUD’s January 18, 2017, notice. Second, it proposes to implement several HOTMA provisions that have not yet

been implemented. Third, it contains several proposed changes to regulatory provisions unrelated to HOTMA, in order to reduce the regulatory burden on PHAs and owners by clarifying, simplifying, and, in some instances, eliminating HUD-imposed requirements. Finally, the rule also proposes elimination of obsolete regulatory provisions.

## **II. This Proposed Rule—Summary of Changes**

### **General Summary**

The proposed rule would codify the following HOTMA provisions that have already implemented through the FR Implementation Notice. Please refer to the identified subsection for preamble discussion related to the codification of these HOTMA provisions.

- Initial inspection options - non-life-threatening deficiencies and alternative inspections (HOTMA section 101(a)(1)) – subsection 5
- Definition of life-threatening deficiencies (HOTMA section 101(a)(1)) – subsection 5
- PHA-owned unit definition (HOTMA section 105) – subsection 2 (and related preamble discussion sections identified in subsection 2)
- Manufactured home space rent calculation (HOTMA section 112) – subsection 10
- PBV Program Cap (HOTMA section 106(a)(2)) – subsection 16
- PBV Project Cap (HOTMA section 106(a)(3)) – subsection 23
- PBV units not subject to project cap or program cap (HOTMA sections 106(a)(2) and (3)) – subsection 28
- PBV initial term of HAP contract and extension of term (HOTMA sections 106(4) and (5)) – subsection 40
- PBV priority of assistance contracts – insufficient funding (HOTMA section 106(a)(4)) – subsection 41

- PBV adding units to HAP contract without competition (HOTMA section 106(a)(4)) – subsection 42
- PBV additional contract conditions/tenant-based assistance for families at termination/expiration without renewal of PBV HAP contract (HOTMA section 106(a)(4)) – subsection 41
- PBV preference for voluntary services (HOTMA section 106(a)(7)) – subsection 46
- Attaching PBVs to projects where the PHA has an ownership interest (HOTMA section 106(a)(9)) – subsection 20

Through the FR Implementation Notice, HUD also previously implemented the HOTMA provision at section 106(a)(9) that authorizes PHAs to project-base Veterans Affairs Supportive Housing (VASH) vouchers and Family Unification Program (FUP) vouchers without requiring additional HUD approval. HUD has determined that no modifications are needed to 24 CFR part 983 to codify these statutory changes. Any VASH vouchers and FUP vouchers project-based pursuant to this authority must comply with the requirements of 24 CFR part 983.

HOTMA further provides that no PHA is required to reduce the payment standard applied to a family as a result of a reduction in the fair market rent (FMR). This provision was implemented in HUD’s Small Area FMR (SAFMR) Final Rule<sup>1</sup> at § 982.505(c)(3).

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<sup>1</sup> “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs,” published November 16, 2016, at 81 FR 80567.

HUD also proposes to implement the HOTMA HCV provisions that have not yet been implemented as part of this rule. Please see the identified preamble subsection for information on the proposed implementation of the following HOTMA provisions.

- Enforcement of Housing Quality Standards (HQS) (HOTMA section 101(a)(3)) - subsection 5
- Manufactured home space rental - PHA option to make single assistance payment to family instead of owner (HOTMA section 112) – subsection 10
- Entering into a PBV HAP Contract for rehabilitation and new construction projects without an Agreement to Enter a HAP Contract (HOTMA section 106(a)(4)) - subsection 34
- Providing rent adjustments using an operating cost adjustment factor (OCAF) (HOTMA section 106(a)(6) – subsection 55
- Owner-maintained site-based waiting lists (HOTMA section 106(a)(7) – subsection 46
- Environmental requirements for existing housing (HOTMA section 106(a)(8) – subsection 25

In addition to the HOTMA changes, HUD is also proposing numerous non-HOTMA related changes. In some cases, these changes are to better clarify existing regulatory requirements. In other circumstances, HUD is seeking to improve the administration of the program, simplify program rules, or reduce administrative burden and cost. For example, in this rule HUD is proposing to change the current requirements to reflect a determination that PBV existing housing is not subject to Davis-Bacon wage requirements (see the discussion in subsection 44 of this preamble). In addition, in certain sections, HUD is inserting references to obligations under Section 504 and the Americans with Disabilities Act, as appropriate, as a

helpful tool for entities implementing HOTMA who are also covered by those laws. Such references do not constitute all Section 504 or ADA requirements, and covered entities should consult the relevant regulations to fully understand their Section 504 and ADA obligations.

Furthermore, HUD is replacing “disabled person” to “person with disabilities,” the terms “person with disabilities” and “person with a disability” are sometimes used interchangeably in program regulations. A person with a disability is a qualified individual with a disability if the individual meets the definition of “disability” under the ADA Amendments Act, which is also the relevant definition for purposes of Section 504. See 42 U.S.C. 12102; 28 CFR 35.108.

A description and discussion of the proposed changes for each regulatory section of this proposed rule (including in certain sections specific questions soliciting input from the commenters) follows.

### **Section-by-Section Summary**

#### **1. Fair market rents for existing housing: Methodology (§ 888.113)**

HUD proposes to clarify in the regulatory text that a PHA that wishes to voluntarily opt in to SAFMRs must request and receive HUD approval prior to adopting SAFMRs. This proposed change is unrelated to HOTMA.

#### **2. Definitions (§ 982.4)**

The proposed rule would revise part 982 definitions to define the terms abatement, independent entity, PHA-owned units, Request for Tenancy Approval, Section 8 Management Assessment Program (SEMAP), and withholding, terms that were previously used but not formally defined in the definitions section of the regulation.

The term independent entity would conform to current HUD guidance and would provide that the independent entity cannot be connected to the PHA legally, financially (except regarding compensation for services performed for PHA-owned units), or in any other manner that could cause the PHA to improperly influence the independent entity. However, HUD is proposing to adopt a modified definition, such that if the independent entity is a unit of general local government or an agency of such government, the unit of general local government or government agency may perform the functions of the independent entity without prior HUD approval. If the independent entity is not a unit of general local government or an agency of such government, then the independent agency would have to be approved by HUD. (Under current regulations at § 982.352(iv)(B), the independent entity must always be approved by HUD. HUD is proposing this change to reduce administrative burden and reporting requirements on PHAs.)

The proposed rule would also add the terms Section 8 Management Assessment Program (SEMAP) and Small Area Fair Market Rents (SAFMRs), terms that are defined elsewhere and referenced in Part 982, and define the terms authorized voucher units and tenant-paid utilities, which, though generally understood, merit specific definition.

HOTMA defined units owned by a PHA, which overrides the definition of a PHA-owned unit previously established in regulation. HUD first implemented the HOTMA definition in the FR Implementation Notice. A few commenters to that notice commented that the definition as implemented by HUD was adequate. Others commented that the definition should be revised to include situations in which the PHA is the ground lessor or participates in the owner entity in any capacity, or when the PHA provides a loan and has a security interest in the property. The HOTMA definition explicitly provides, however, that none of these three situations constitutes PHA ownership. Therefore, HUD is proposing to conform the HCV and the PBV regulations (at



§§ 982.4 and 983.3, respectively) to the final FR Implementation Notice without any changes and incorporate this definition as needed throughout the regulations. In addition to these HOTMA changes, HUD is proposing to make other changes to the requirements for PHA-owned units. Please see the related preamble discussion at §§ 982.352(b), 982.451, 983.57, and 983.204.

Question 1. HUD is specifically requesting comment on the proposed definition of a PHA-owned unit. In addition, the proposed rule specifies in the definition of independent entity that the independent entity cannot be connected to the PHA legally, financially (except regarding compensation for services performed for PHA-owned units), or in any other manner that could cause the PHA to improperly influence the independent entity. Is this standard too broad, particularly as it relates to an existing financial relationship? Under what circumstances could the PHA and the independent entity be connected financially where the independent entity would still retain sufficient independence to perform its administrative responsibilities for PHA owned units?

### 3. Administrative Plan (§ 982.54)

This rule would update § 982.54 by adding new Administrative Plan requirements for the tenant-based program regarding PHA policymaking authority with respect to programmatic concerns such as payment standards and inspections. These changes reflect options made available to the PHA by HOTMA and as otherwise proposed in this rulemaking. (HUD proposes to add a new § 983.10, which identifies areas in which PHAs have policymaking discretion specific to the PBV program.) The list proposed in this proposed rule is not intended to be an all-inclusive list; instead, the list would highlight the major policy areas where the PHA has some administrative discretion.

Question 2. Are there areas other than those specified in the new § 983.10 where HUD could provide greater discretion to PHAs to support their efforts to operate their programs effectively?

#### 4. Information when family is selected (§ 982.301)

HUD proposes to correct the regulation at § 982.301(b) to reinstate the requirement that the briefing packet to the family include information regarding when the PHA is required to provide a program participant with the opportunity for an informal hearing, including how the participant may request a hearing. The September 1, 2015, technical correction to the streamlining portability rule, published at 80 FR 52619, inadvertently deleted this requirement.

In addition to this correction, HUD is proposing several changes related to the oral briefing the PHA gives the family to explain additional disability-related obligations that exist under other regulations. This includes: (1) citing 28 CFR part 35 (Title II), Subpart E and 28 CFR part 36 (Title III) along with 24 CFR 8.6 as additional, relevant regulations that require the PHA to take appropriate steps to ensure effective communication with persons with disabilities; (2) adding that when briefing the family on when the PHA will consider granting exceptions to the subsidy standards, the PHA must discuss reasonable accommodations that may be required for a person with disabilities; (3) specifying that the oral briefing must include contact information for the Section 504 coordinator and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, or the ADA, as applicable; and (4) specifying that if the family includes a person with disabilities, the PHA must provide not only notice that the family may request a current listing of accessible units known to the PHA that may be available but also, if necessary, other assistance in locating an available accessible unit in accordance with § 8.28(a)(3).

HUD is also proposing to add a new subsection (c) regarding information for persons with limited English proficiency. Specifically, PHAs would need to 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, Executive Order 13166, and HUD's LEP Guidance (see 72 FR 2732 (2007)).

5. Inspection of dwelling units (§§ 982.305, 982.401, 982.404, 982.405, 982.406, 983.103, 983.208)

Section 101 of HOTMA made significant changes to the unit inspection requirements for the HCV program (both tenant-based and project-based assistance). In general, a PHA may not execute a HAP contract until the PHA has inspected the unit and determined that it meets the Housing Quality Standards of the HCV program. HUD previously implemented two HQS initial inspection options provided under HOTMA in the FR Implementation Notice. The first is in the case of the non-life threatening (NLT) option, where the PHA may choose to approve an assisted tenancy, execute the HAP contract, and begin making housing assistance payments on a unit that fails the initial HQS inspection, provided the unit's failure to meet HQS is the result only of non-life-threatening conditions. The second is the alternative inspection option, where the PHA may approve the tenancy and execute the HAP contract prior to inspecting the unit if the property has in the previous 24 months passed an alternative inspection (i.e., an inspection conducted for another housing program). The PHA cannot make a payment to the owner until the PHA has inspected the unit and found it to meet HQS standards, at which point the PHA makes the assistance payments retroactively back to the effective date of the HAP contract. This rule proposes changes to conform the HCV program regulations to account for these two previously implemented options.

HOTMA also contains specific requirements for (1) the withholding of assistance payments from the owner during the HQS deficiency correction period, (2) the abatement of payments and the termination of the HAP contract for units that fail to comply with HQS, and (3) the relocation of families where the HAP contract will be terminated due to the failure to comply with HQS. Under HOTMA, the family must be given 90 days or longer to lease a new unit upon termination of the HAP contract. In addition, the family must be given a preference for public housing if the family fails to find a new unit with their voucher. The PHA may also 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, which includes security deposits and reimbursements for moving expenses. HOTMA further provides that these new HQS enforcement and family relocation requirements must be implemented by regulation, and this proposed rule initiates the rule-making process for those provisions.

In addition to the HOTMA-related changes, as an administrative streamlining measure HUD is also proposing adding a new subsection to § 982.405 on the verification methods that may be used by the PHA to confirm an HQS deficiency has been corrected.

Specifically, HUD is proposing the following changes with respect to the HOTMA inspection requirements. (HUD has included proposed definitions of abatement and withholding in § 982.4, as discussed above.)

*a. Approval of assisted tenancy (982.305)*

The existing regulations at § 982.305 contain the PHA requirements that must be met to approve an assisted tenancy. This proposed rule would update § 982.305 to reflect that a HAP contract may, in certain cases, be executed prior to a dwelling unit meeting HQS when the PHA adopts either the initial HQS inspection NLT option or the initial HQS inspection alternative

inspection option (discussed in detail below at §§ 982.405 and 982.406 respectively). The purpose of these two options would be to provide PHAs with additional flexibility to implement policies that assist families to be more competitive in the private market and increase their chances of obtaining an affordable unit.

Specifically, in § 982.305(f), HUD proposes codification in the regulations of the actions the PHA must take regarding the initial inspection of the unit to approve the assisted tenancy, revised to include the applicable requirements if the PHA has implemented and determined the unit is eligible for either the initial HQS inspection options (i.e., the NLT option or the alternative inspection).

HUD is also proposing a non-HOTMA related change to § 982.305(c)(4). The paragraph would generally provide that if the HAP contract is executed later than 60 calendar days from the beginning of the lease term, the contract is void, and the PHA may not pay any housing assistance payment to the owner, as is currently the case under the current regulations. The proposed regulation provides that if there are extenuating circumstances that prevent or prevented the PHA from meeting the 60-day deadline, then the PHA may submit a request to HUD for an extension. HUD is proposing to allow PHAs to request this extension in recognition that there are situations where the PHA may need an extension and approving the request would be in the best interest of the family. The PHA request would have to include an explanation of the extenuating circumstances and any supporting documentation.

*b. Establishment of life-threatening conditions (§ 982.401(o))*

As discussed above in § 982.305, HOTMA provided an exception to the generally applicable requirement that units must be inspected and must meet Housing Quality Standards before the PHA may make a housing assistance payment. Under the initial inspection NLT

option, PHAs may choose to approve an assisted tenancy, execute the HAP contract, and begin making housing assistance payments on a unit that fails to meet HQS, provided the unit's failure to meet HQS is the result only of non-life-threatening conditions, as such conditions are defined by HUD. For the purposes of implementing the NLT option in the FR Implementation Notice, HUD defined a non-life-threatening condition as any condition that would fail to meet the Housing Quality Standards under § 982.401 and is not a life-threatening condition, and then proposed a definition of life-threatening conditions and invited comment. Some commenters supported the definition, while others suggested expansion. For example, commenters recommended that HUD include mold or conditions that could lead to mold. HUD determined that the suggested items do not meet the threshold for inclusion in the list of life-threatening conditions and made no revisions to the proposed definition. This proposed rule would codify the existing list of life-threatening deficiencies list (cited in § 982.401(o)). In addition, HUD is proposing that the proposed definition of life-threatening deficiencies would be applicable to all PHAs. (Under the FR Implementation Notice, PHAs were only required to adopt HUD's list of life-threatening deficiencies if they implemented the NLT option.) In addition, any other condition identified by the PHA as life-threatening would also be a life-threatening deficiency, provided the condition was identified as such in the PHA administrative plan. All other conditions that would cause a failure of HQS are NLT. The list of life-threatening conditions would continue to be updated by HUD through notices published in the Federal Register. These FR notices would provide for the opportunity for public comment before any changes to the list of life-threatening deficiencies became effective.

HUD is also proposing to add a new subparagraph (5) to § 982.401(a) to clarify in this section that all defects that are not life-threatening conditions must be remedied within 30 days

of the owner's receipt of written notice of the defects or a reasonable longer period that the PHA establishes.

Question 3. Is HUD's list of life-threatening conditions appropriate? Are there conditions listed that should not be considered life-threatening? Are there conditions absent from the list that should be considered life-threatening?

c. Enforcement of HQS (§§ 982.404, 983.208)

Section 101 of HOTMA established certain requirements PHAs must follow when an owner fails to bring a unit into compliance with HQS. These requirements include specific time frames for compliance, after which a PHA must first withhold and then abate payments; ultimately, HOTMA provides that a PHA must terminate a HAP contract in response to continued noncompliance. HOTMA also includes certain protections for affected families and requirements related to the relocation of those families when the HAP contract is terminated. These same statutory provisions apply to both tenant-based units and project-based units. For the PBV program, the PHA may take an enforcement action on an individual unit that is part of a HAP contract (for example, removing the unit from the HAP contract), or it may terminate the HAP contract. These HOTMA provisions are set forth in section 8(o)(8)(G) of the United States Housing Act of 1937.

The law provides that these provisions 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 subparagraph (G)." For tenant-based HAP contracts, HUD is interpreting a contract that is "renewed" to mean a HAP contract that has continued beyond the end of the initial lease term. For PBV, HUD is interpreting a contract that is "renewed" to be a contract that has been extended beyond the initial term of the contract. For

contracts that were not entered into or renewed after the effective date of the regulations, §§ 982.404 and 983.208 as of the date before the effective date of the final rule will remain in effect. Please see the related PBV discussion in the preamble below at § 983.208.

Specifically, § 982.404(a) would be revised to codify the HOTMA requirement that a unit is out of compliance with the Housing Quality Standards if either the PHA or an inspector authorized by the State or unit of local government (1) determines upon inspection of the unit that the unit fails to comply with HQS, (2) notifies the owner in writing of the failure, and (3) the defects are not corrected within the new statutorily mandated timeframes. These timeframes are consistent with the existing regulatory timeframes under the current regulations. If the defect is life-threatening, the owner must correct the defect within no more than 24 hours after notification. For other defects, the owner must correct the defect within no more than 30 days after notification (or any PHA-approved extension).

Under the current regulations at § 982.404(a)(4), the owner is not responsible for a breach of the HQS that is not caused by the owner and for which the family is responsible. This is not always the case under HOTMA. HOTMA provides that if a PHA determines that any damage to a unit that results in a HQS deficiency (other than 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 PHA may waive the requirement that the owner is responsible for correcting the deficiency. If the PHA waives the owner's responsibility to correct the deficiency, then the family is responsible for making the repairs. Under HOTMA, the PHA must proactively take action to waive the owner's responsibility to correct the tenant related HQS deficiency in order for that responsibility to be placed on the family. HUD assumes that PHAs would want to waive the owner's responsibility in cases where the HQS deficiency was caused by the tenant in



order not to discourage owners from participating in the program, so this change should not have much of a practical impact in terms of the responsibility for the family to make the necessary repairs. However, the proposed regulation at § 982.404(a)(4) would comply with the new HOTMA standard that the tenant is not automatically responsible for making the HQS repair for tenant caused damage, but rather such responsibility is dependent on the PHA waiving the owner's responsibility to correct the deficiency in those instances.

HUD is also proposing to add a new paragraph to § 982.404 to implement the HOTMA provisions regarding when a PHA may withhold payments and when a PHA must abate payments and terminate the HAP contract as the result of HQS deficiencies (§ 982.404(d)). If a PHA "withholds" payments, the PHA has stopped making payments to the owner but is holding the payments for potential retroactive adjustment depending on the action the owner takes. If the PHA "abates" payments, the PHA has stopped making payments to an owner and there is no potential for retroactive payment.

HOTMA provides that a PHA may choose to withhold payments once the PHA has notified the owner in writing of the deficiencies. If the PHA withholds the payments and the unit is brought into compliance during the applicable cure period (24 hours for life-threatening deficiencies and 30 days (or other reasonable period established by the PHA) for NLT deficiencies), the PHA must resume payments and provide assistance payments to cover the time period for which the assistance payment was withheld (§ 982.404(d)(1)). This is a significant change from the current requirements, where the PHA may not withhold payments from the owner during the permitted cure period.

HOTMA also provides that the PHA must abate the HAP if the owner fails to make the repairs within the applicable cure period. Furthermore, if the owner fails to make the repairs

within 60 days (or a reasonable longer period established by the PHA) of the determination of noncompliance, the PHA is required to terminate the HAP contract (§ 982.404(d)(2)). The date of determination of noncompliance would be the day following the expiration of the cure period (24 hours for a life-threatening deficiency and 30 days (or other reasonable period established by the PHA) for non-life-threatening deficiencies).

Along with the new designated timeframes for abating and then terminating the HAP contract, this proposed rule would provide that in accordance with HOTMA the PHA must notify the family and the owner that the PHA is abating the payments and that if the unit does not meet HQS within 60 days after the determination of noncompliance (or a reasonable longer period established by the PHA), the PHA must terminate the HAP contract and the family will have to move if the family wishes to continue to receive assistance (§ 982.404(d)(2)(ii)). As provided in HOTMA, the rule would expressly provide that the owner may not terminate the tenancy of the family due to the withholding or abatement of the payment, and that the family may terminate the tenancy during the abatement period by notifying the owner and the PHA (§ 982.404(d)(3)).

Finally, under HOTMA, if the owner makes the repairs and the unit complies with the HQS within the required timeframe, the PHA must recommence payments to the owner. However, the PHA may not make any payments to the owner for the period of time the payments were abated. If the owner fails to make the repairs within 60 days (or the reasonable longer period established by the PHA), the PHA must terminate the HAP contract (§ 982.404(d)(4) and (5)).

The proposed rule would add a new paragraph § 982.404(e) to implement the HOTMA provisions related to the family's relocation due to HQS deficiencies. The family protections would be as follows: (1) the PHA must give the family at least 90 days following the termination

of the HAP contract to lease a new unit. (2) If the family is unable to lease a unit within that period and the PHA owns or operates public housing, the PHA must offer and provide the family with a preference for the first appropriately sized public housing that become available for occupancy after the family's search time expires. (3) The PHA may choose to use up to 2 months of the withheld and abated assistance payments for costs directly associated with relocating to a new unit, including security deposits or reasonable moving costs. Use of the abated HAP for this purpose would be an eligible HAP expense under the HCV program and would be part of the HAP renewal funding eligibility calculation for the PHA.

As discussed above, HOTMA provides that new provisions under section 8(o)(8)(G) of the 1937 Act apply only to HAP contracts that are either executed or renewed after the effective date of the implementing regulation. HUD is proposing to add a new paragraph (f) on the applicability of § 982.404 in accordance with the statutory requirement. For HAP contracts not covered by these new HOTMA provision, § 982.404 as in effect the day before the Final Rule becomes effective will remain applicable.

HUD is proposing similar changes to § 983.208 to implement these same HOTMA provisions for the PBV program. Please see the related discussion at § 983.208 later in this preamble.

*d. PHA initial unit inspection (§ 982.405)*

Section 982.405 covers the requirements for PHA initial and periodic unit inspections. As discussed previously, HOTMA provides two new alternative initial HQS inspection options for the PHA. If a PHA adopts the initial HQS inspection NLT option, the PHA may approve a tenancy after a unit has failed a housing quality inspection if the unit has failed only for non-life-threatening conditions. Allowing HAP payments to begin while the owner makes minor repairs

to the unit could result in increasing the number of landlords willing to participate in the program. This proposed rule would add a new paragraph (§ 982.405(i)) to cover the initial HQS inspection non-life-threatening option. The PHA would be allowed to apply the NLT option to all of the PHA's initial inspections or may limit the use of the option to certain units. The proposed requirements under the new § 982.405(i) are consistent with the current requirements that HUD established when it implemented the initial HQS inspection NLT option in the FR Implementation Notice, including the requirement that the family may choose to decline the unit based on the identified NLT deficiencies and simply continue their housing search.

In addition to adding the new NLT option subsection, HUD is proposing non-HOTMA related changes to § 982.405, including § 982.405(g), which concerns the inspection the PHA must conduct on a unit when notified of a potential life-threatening deficiency by a family or a government official. In the case where the reported deficiency, if confirmed, would be a life-threatening deficiency, the PHA would have to both inspect the housing unit and notify the owner (if any life-threatening deficiency is confirmed) within 24 hours of receiving the report of the potential deficiency. The owner would have to make the repairs within 24 hours of the PHA notification. If the reported deficiency (if confirmed) would be NLT, the PHA would have to both inspect the unit and notify the owner whether the deficiency is confirmed within 15 days that the family or government official reported the suspected deficiency. The current regulation provides the time frames by which the PHA must make the inspection but is silent on the timeframe by which the PHA must notify the owner if the deficiency is confirmed. In addition, § 982.405(g) is being revised to reference the proposed definition of what constitutes life-threatening conditions at § 982.401(o) of this rule.

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?

Finally, HUD is proposing to add a new paragraph (h) that would expressly provide that when a PHA must verify a correction of an HQS deficiency, the PHA may use verification methods other than another on-site inspection. This proposal builds on Notice PIH 2013-17,<sup>2</sup> where HUD provided guidance on the use of photos to document the correction of HQS deficiencies for annual inspections. This guidance was issued to provide administrative relief as well as a cost-savings measure by reducing the need for on-site reinspection. Currently, on-site verification is required for initial inspections. In codifying that alternative verification methods to on-site re-inspections are acceptable, HUD also proposes to expand the use of the alternative verification methods to include verifying that deficiencies identified in the initial inspection have been corrected.

*e. Use of alternative inspections (§ 982.406)*

Section 982.406 covers the requirements for the use of alternative inspections. This rule would add a new paragraph (e) to § 982.406 to codify the HOTMA-authorized use of alternative inspections for initial HQS inspections, in addition to the existing requirements for biennial inspections once the unit is under HAP contract. Adoption of the alternative inspection option for initial HQS inspections would enable a PHA to approve an assisted tenancy and enter into a HAP contract, provided the unit has passed an approved alternative inspection within the 24 months

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<sup>2</sup> "Housing Choice Voucher (HCV) Program – Review of Existing HQS Requirements and the Use of Photos to Improve HQS Oversight", published July 2, 2013, available at <https://www.hud.gov/sites/documents/PIH2013-17.PDF>.

prior to execution of the HAP contract. The PHA may not make payments to the owner, however, until the PHA inspects the unit. The proposed § 982.406(e) for the initial HQS inspection alternative inspection option is consistent with the current requirements implemented under the FR Implementation Notice with one exception. In response to comments received, HUD is proposing to extend the amount of time available to a PHA to conduct its own inspection of the unit from 15 to 30 days from receipt of the Request for Tenancy Approval.

Please see the related discussion on the HOTMA alternative inspection requirements for PBV later in this preamble at § 983.103.

#### 6. Eligible Housing (§ 982.352) – Compensating independent entity for PHA-owned units

HUD is taking this opportunity to propose a non-HOTMA related change regarding the wording and organization of the current regulation at § 982.352(b)(1)(iv)(C). HUD is proposing to clarify that the PHA may compensate the independent entity from PHA administrative fees (including fees credited to the administrative fee reserve). The current regulation refers to “ongoing administrative fee income” which includes fees in the administrative fee reserve. However, this language inadvertently created confusion as to whether the undefined term “ongoing administrative fee income” included funds in the administrative fee reserve. HUD is proposing to revise the language so it specifically provides that the administrative fee reserve may be used by the PHA to compensate the independent entity.

HUD further is proposing to redesignate § 982.352(b)(1)(iv)(C) to § 982.352(b)(1)(iv)(B). This is a conforming change. Since HUD would be formally defining “independent entity” in § 982.4 of this proposed rule, HUD proposes to eliminate the current § 983.352(b)(1)(iv)(B), which explains what that term means. Please see the related discussion on the definition of independent entity in this preamble above at § 982.4.

Question 5. Are there functions, other than those identified in the proposed rule (see §§ 982.352(b)(1)(iv)(A), 982.628(d)(3), and 983.57), that an independent entity should perform in the case of PHA-owned units?

Question 6. In contrast, are there functions identified by the proposed rule (besides rent reasonableness determinations and inspections, which are required by statute) that the PHA should be able to perform with respect to PHA-owned units instead of having an independent entity do so? If so, why should the PHA perform those functions instead of an independent entity?

7. Housing assistance payments contract (§§ 982.451, 983.204) – PHA-owned unit certification option

The proposed rule would address how the PHA executes the HAP contract for a PHA-owned unit for both tenant-based units (§ 982.451(c)) and project-based units (§ 983.204(d)). As a general principle of contract law, a PHA cannot execute a HAP contract with itself (i.e., signing the HAP contract as both the PHA and the owner). For some PHA-owned units, a separate legal entity already owns the PHA-owned unit (e.g., an entity wholly controlled by the PHA, a limited liability corporation controlled by the PHA, or a limited partnership controlled by the PHA). However, in other cases a separate legal entity does not own the PHA-owned unit. Instead, the PHA is in fact the actual legal entity that owns the unit. In order to eliminate confusion over the execution of the HAP contract for PHA-owned units, the proposed rule would expressly provide that the PHA must execute the HAP contract for a PHA-owned unit with a separate legal entity. If the PHA is the legal entity that owns the unit, then in order to execute the HAP contract the PHA would need to create a separate legal entity. This separate legal entity would be established by the PHA to serve as the owner solely for the purpose of executing the

HAP contract with the PHA. The proposed rule would provide that this separate legal entity may be one of the following: (a) a non-profit affiliate or instrumentality of the PHA; (b) a limited liability corporation, (c) a limited partnership; (d) a corporation; or (e) any other legally acceptable entity recognized under State law.

This separate legal entity would be completely different from the independent entity that is required to perform certain administrative responsibilities on behalf of the PHA for a PHA-owned unit. The proposed rule would further clarify that the independent entity may notify either the PHA, the separate legal entity created by the PHA to serve as the owner for purposes of executing the HAP contract, or both the PHA and the separate legal entity, of a determination the independent entity has made (e.g., the unit passed inspections, the rent for the unit is determined to be reasonable) in carrying out its responsibilities for the PHA-owned unit.

HUD recognizes that creating a separate legal entity to serve as the owner for the sole purpose of executing the HAP contract may create complexity and administrative burden for the PHA, particularly in the case of a tenant-based voucher family that wishes to rent an individual PHA-owned unit. HUD is therefore proposing a new PHA option for a PHA-owned unit that is not already owned by a separate legal entity. Under this option, the PHA would not execute the HAP contract but instead sign a HUD-prescribed certification. The PHA would certify that it will fulfill all the program responsibilities required of the private owner under the HAP contract. In addition, the PHA would certify it will also fulfill all the PHA's responsibilities for the PHA-owned unit, including that the PHA has obtained the services of an independent entity to perform the required PHA functions. The PHA-executed certification would essentially serve as the equivalent of the HAP contract for the PHA-owned unit, under which the PHA is legally



committed to and responsible for fulfilling its responsibilities as both the PHA and the owner of the PHA-owned unit.

The certification option would be available both for tenant-based PHA-owned units (§ 982.451(c)(3)) and project-based PHA-owned units (§ 983.204(d)). However, this option would not be available if the PHA-owned unit is owned by an entity wholly controlled by the PHA or owned by either 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. In that circumstance, the PHA would simply execute the HAP contract as the PHA, and the entity, limited liability company, or limited partnership executes the HAP contract as the owner. Additional changes to § 983.204 are discussed below.

#### 8. Payment standards and how to calculate housing assistance payments (§§ 982.503, 982.505).

HOTMA provides that no PHA is required to reduce the payment standard applied to a family as a result of a reduction in the fair market rent (FMR). This provision was implemented in HUD's Small Area FMR (SAFMR) Final Rule at § 982.503(c)(3),<sup>3</sup> and comprehensive guidance was published in Notice PIH 2018-01.<sup>4</sup> Besides revising § 982.505(c)(3) for greater clarity, and making other non-HOTMA related revisions to parts of § 982.505 to better convey the intent of the current requirements, HUD is also proposing several changes related to the

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<sup>3</sup> "Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs," published November 16, 2016, at 81 FR 80567.

<sup>4</sup> "Guidance on Recent Changes in Fair Market Rent (FMR), Payment Standard, and Rent Reasonableness Requirements in the Housing Choice Voucher Program," published January 17, 2018, available at <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-01.pdf>.

administration of increases and decreases in the payment standard amount. These changes are not required by HOTMA, but they are proposed to improve the process by which changes in payment standard amounts are applied to impacted families.

*a. Payment standard areas, schedule, and amount (§ 982.503)*

This proposed rule would address the conditions and procedures that apply to the establishment of exception payment standard areas and amounts, whether or not SAFMRs are in effect in the exception payment standard area. The regulations at § 983.503 would be revised and reorganized for greater clarity. In addition, HUD is proposing to (1) establish a minimum size for an exception payment standard area, (2) increase the PHA's administrative discretion to establish higher exception payment standards without HUD approval, and (3) allow the PHA to reduce the payment standard below the basic range without HUD approval if certain conditions are met.

These proposals are described in greater detail below.

*b. Minimum size of exception payment standard area (§ 982.503(a)(3)(ii))*

HUD proposes to revise the regulations at § 983.503(a) to specify that HUD publishes FMRs for Small Area FMR areas, metropolitan areas and non-metro counties. In addition, HUD proposes to require that an exception payment standard area be no smaller than a census tract block group. A census tract block group is the smallest area of geography for which rental data is available. The current regulation does not address the size of a designated area.

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

Sections 982.503(b) and (c) would be revised as part of the § 982.503 restructuring. The proposed § 982.503(b) would cover the payment standard schedule that the PHA must maintain (which, in the current regulation, is covered under § 982.503(a)). The proposed § 982.503(c) would cover basic range payment standard amounts (which, in the current regulation, is covered

under § 982.503(b)). The basic range payment standard amount is any amount in the range from 90 percent up to and including 110 percent of the published FMR. The PHA would be permitted, as is in current regulations, to establish a payment standard in the basic range without HUD approval. Payment standards above the basic range are exception payment standards. The requirements for payment standards that fall outside the basic range—some of which are currently covered under § 982.503(b) and (c)—would all be consolidated in § 982.503(d) of this proposed rule. The proposed changes to the requirements for exception payments standards and also payment standards that are set below the basic range are discussed below.

*d. Exception payment standards (§ 982.503(d))*

Section 982.503(d) would address how a PHA may establish exception payment standard amounts. In paragraph (d)(1), the regulation would clarify that the PHA may establish an exception payment standard for all units or may limit the exception payment standard to units of a given size, as is currently permitted in the HCV program. The paragraph would also clarify that the exception area must meet the minimum size requirements (no smaller than a census tract) that is proposed at § 982.503(a)(3)(ii) in this rule.

Paragraph (d)(2) would continue the current exception payment standard policy that permits a PHA that is not in a designated SAFMR area or has not opted to voluntarility implement SAFMRs under 24 CFR 888.113(c)(3) to establish exception payment standards for a ZIP code area above the basic range of the metropolitan FMR without prior HUD approval, provided the exception payment standard does not exceed 110 percent of the HUD published SAFMR for the ZIP code area. The proposed rule clarifies that if the PHA exception area crosses one or more FMR boundaries (i.e., contains more than one ZIP Code area), 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.

Paragraph (d)(3) would address the ability of PHAs to set exception payment standard amounts for exception areas higher than 110 percent of the applicable FMR with prior HUD approval. The PHA would need to provide rental market data demonstrating that the exception payment standard amount requested is needed to enable families to access rental units in the exception payment standard area. The data submitted by the PHA would not have to be the same level as that required to request a reevaluation of the FMR established in accordance with 24 CFR part 888. Instead, the PHA would be permitted to use local sources of information to support its request.

Question 7. For an exception payment standard request unrelated to a reasonable accommodation request, should HUD provide greater flexibility to PHAs to establish exception payment standards without HUD approval in order to reduce administrative burden and allow the PHA to respond more quickly to rapidly changing rental markets? If so, what parameters or limits should apply to that exception payment standard authority (e.g., allow the PHA to establish an exception payment standard without prior HUD approval up to 120 percent of the SAFMR)? With respect to exception payment standard requests requiring HUD approval, should HUD establish a minimum standard for the type of rental market data that a PHA must provide to demonstrate the need for an exception payment standard in the requested area, and what should that standard be? For example, should HUD continue to require that the rental market data provided by PHAs include a statistically representative sample of rental housing survey data in the exception payment standard area? More specifically, should HUD require a PHA to obtain, for a sample of properties located in the exception payment standard area, a Rent

Comparability Study prepared in accordance with HUD's Multifamily Accelerated Processing Guide? Should HUD require that any assessment of rental market data be prepared by a certified appraiser?

Question 8. For an exception payment standard request unrelated to a reasonable accommodation request, should HUD establish a maximum cap on exception payment standard amounts that it will consider for approval (for example, some percentage of the SAFMR)? HUD has concerns that in some high-cost markets, exception payment standards could reach unreasonably high levels.

Finally, HUD proposes consolidating all exception payment standards requirements into § 982.503(d) by moving requirements for exception payment standards that are required for a reasonable accommodation from § 982.505(d) to § 982.503(d)(4). HOTMA provides that, without HUD approval, a PHA may establish an exception payment standard of not more than 120 percent of the FMR if needed as a reasonable accommodation for a family that includes a person with a disability. A PHA may establish a payment standard greater than 120 percent of the FMR after requesting and receiving HUD approval. These flexibilities had already been implemented as part of the SAFMR Final Rule. In this proposed rule, HUD would clarify that the exception payment standard limit applies to the metropolitan area FMR or the Small Area FMR, whichever FMR is in effect in the ZIP code area in which the family resides.

*e. Payment standard below the basic range (§ 982.503(e))*

HUD proposes that a PHA be permitted to establish a payment standard amount that is not lower than 90 percent of the SAFMR for a ZIP code area that is subject to metropolitan area FMRs, without HUD approval. HUD approval for a payment standard below 90 percent of the applicable SAFMR would still be required. Currently, a PHA that has not implemented SAFMRs

would need HUD approval to reduce the payment standard below 90 percent of the metropolitan FMR. As is the case for exception payment standards, the HUD-published SAFMRs provide the justification that the reduced payment standard would still be reasonable for the ZIP code area based on rents in that area, and consequently HUD review and approval of a payment standard that is within the basic range of the SAFMR for the ZIP code area is not necessary.

Question 9. The current regulation (at § 982.503(h)) provides that HUD will monitor PHAs' payment standards for units of a particular size if HUD finds that 40 percent or more of families occupying units of that unit size pay more than 30 percent of adjusted monthly income (AMI) as the family share. The statutory standard for HUD review is that a "significant percentage" of families pay more than 30 percent of adjusted income for rent.

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)?

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? (For example, the HUD review would be triggered if 30 percent of families pay more than 40 percent of AMI, even though less than 50 percent of families are paying no more than 30 percent of AMI.)

Question 10. Should HUD retain success rate payment standards, or, in the interest of streamlining the regulation, is there a way to use SAFMRs to accomplish the same purpose as success rate payment standards?

*f. Payment standard reduction (§ 982.505(c)(3))*

Section 982.505(c)(3) would detail how a PHA is to address a reduction in the payment standard amount for a family that remains in their unit after the reduction. HUD is proposing changes throughout this provision to provide clarity on the obligations of and flexibilities afforded to the PHA. In addition, HUD is proposing that the family protections related to the application of decrease in the payment standard amount apply during the time the family remains assisted in the same unit, as opposed to during the term of the HAP contract. There are circumstances where the owner and the PHA may terminate the existing HAP contract and execute a new HAP contract to continue to assist the same family in the same unit. For example, tenant-based assistance may not be continued unless the PHA has approved a new tenancy in accordance with the program requirements and executed a new HAP contract with the owner if there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances. If those circumstances occur shortly after the decrease in the payment standard, it is not fair to the family to apply the reduction in the payment standard amount at the new HAP contract effective date, since the family hasn't moved and is being continuously assisted at the same unit.

HUD is also proposing a change in the notification requirements to families when a reduction in the family's payment standard amount will result in the family paying a higher rent if they stay in their unit. Specifically, the 12-month advance notice provided to families affected by a decrease in the payment standard would have to 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 (e.g., online). A notification to the family that does not include the amount of

the reduced payment standard would not be sufficient for families to make an informed decision on whether or not they can afford to remain in their current unit and pay the higher rent or if they should use the 12 months to begin searching for a lower-cost unit.

The proposed rule would further provide that 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. This 2-year requirement would replace the current standard that the initial reduction may not be applied any earlier than the family's second regular examination following the effective date of the decrease in the payment standard. HUD believes that the 2-year standard will provide a consistent and more equitable protection to families than the current standard. Under the current policy, the length of the "hold harmless" protection varies significantly among individual families since it is based on when the family's regular examination is scheduled compared to when the decrease in payment standard went into effect. For example, one family might have the decrease in the payment standard applied 13 months following the effective date of the payment standard change, while another family would benefit from the protection for 23 months.

In addition to the change to a standard, consistent 2-year protection for families that remain in-place, the rule further proposes that the decrease in the payment standard could not be applied unless the family had received the required 12-month advance notice.

*g. Payment standard increase during HAP contract term (§ 982.505(c)(4))*

Section 982.505(c)(4) would address what a PHA is to do when a payment standard amount is increased during the term of a family's HAP contract. HUD proposes to require that the increased payment standard amount must be used to calculate the family's housing assistance payment no later than the earliest of the effective date of (1) an increase in the gross rent that will



result in an increase in the family's share, (2) the family's first regular reexamination, or (3) one year following the effective date of the increase in the payment standard amount. The intent of this change is to eliminate 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.

HUD is also proposing to move the requirements at § 982.505(d) for the PHA approval of a higher payment standard for a family that is necessary as a reasonable accommodation to § 982.503. This change would consolidate all the exception payment standard requirements into the same regulatory section.

#### 9. Utility allowance schedule (§ 982.517)

HUD proposes several non-HOTMA related updates to the utility allowance regulations at § 982.517 in order to lessen administrative requirements and provide greater flexibility for PHAs in determining both area-wide schedules and site-based schedules for the PBV program. HUD is also proposing to reorganize § 982.517 for better clarity.

In § 982.517(e), HUD is proposing to revise the text to provide greater detail on additional fair housing requirements that a PHA may be subject to in determining if a higher utility allowance is needed as a reasonable accommodation under Section 504 or the ADA for a family that includes a person with disabilities.

This rule would also eliminate the requirement that a PHA submit its utility allowance schedule to the field office in order to reduce PHA reporting requirements and administrative burden. While each PHA must still maintain a utility allowance schedule and provide the schedule to HUD upon request, a PHA would no longer be required to routinely submit the schedule to the field office under this proposed rule.

HUD also proposes to allow a PHA to adopt additional options for setting its utility allowance schedule. Currently, each PHA must maintain one area-wide utility allowance schedule based on energy-conservative households.

Through this rulemaking, HUD proposes the following changes:

*a. Area-wide energy-efficient utility allowance schedule (§ 982.517(b)(2)(ii))*

The proposed changes to § 982.517 would provide each PHA with the option to adopt an area-wide utility allowance schedule for energy-efficient units in addition to the traditional utility allowance schedule. The PHA would be able to use its energy-efficient utility allowance schedule only for units in projects that meet certain energy-efficiency standards. This change would allow the utility allowance schedule to reflect utility allowance amounts that more accurately reflect what the family's actual utility costs will be in cases where the family is leasing an energy efficient unit. This change is intended to expand the number of energy efficient units that are available to the family. Since the restriction on the maximum amount that the family may pay at initial occupancy of a unit is based on the gross rent (rent to owner plus the utility allowance for tenant-supplied utilities), a utility allowance that reflects the lower utility costs of the energy efficient units will allow energy efficient units with correspondingly higher rents to now be an option for the family to consider leasing on the program.

Question 11. Should HUD authorize PHAs to use energy-efficient utility allowance schedules for a broader range of projects than are defined at § 982.517(b)(2)(ii)?

*b. Utility allowance based on flat fees (§ 982.517(b)(2)(iii))*

Under the proposed regulation, PHAs would have the option of substituting flat fees charged for certain utilities in the lease for the area-wide utility allowance for that utility, but only if the flat fees are lower than those in the area-wide utility allowance. Sometimes the flat fee

charged by the owner reflects actual utility costs and is considerably lower than the utility allowance amounts. In effect, if the PHA uses the utility allowance rather than the actual utility costs, the gross rent would be higher. In competitive housing markets, this can make the unit exceed the maximum family share at initial occupancy even though the rent to owner and the actual utility charges do not exceed 40 percent of the family's adjusted monthly income. In other cases, the PHA could provide a smaller subsidy if the gross rent were based on the flat fee rather than the utility allowance schedule.

If a PHA adopts an area-wide energy-efficient utility allowance schedule or utility allowances based on flat fees, the policies would have to be applied consistently for all families and stated in the PHA's Administrative Plan.

#### 10. Manufactured home space rental (§ 982.623)

Section 112 of HOTMA amended section 8(o)(12) of the 1937 Act with respect to the use of voucher assistance provided to families that are owners of manufactured housing and are paying rent on the space on which the manufactured home is located (the manufactured home space). The manufactured home space rental is a special housing type under Subpart M of the 982 HCV regulations.

Prior to the HOTMA amendment, voucher assistance payments on behalf of owners of manufactured housing under section 8(o)(12) could only be made to assist the family with the rent for the manufactured home space. Section 112 expanded this definition of the "rent" to include other housing expenses, specifically the monthly payments made by the family to amortize the cost of purchasing the manufactured home (including any required insurance and property taxes). This change in the rental subsidy calculation for families renting manufactured home spaces was implemented by the FR Implementation Notice. ., The practical effect of this

change was to increase the amount of housing assistance payment that may be paid on the behalf of the family by taking into account family housing expenses related to the manufactured home they own beyond the space rent and tenant-paid utilities. This proposed rule would codify the new subsidy calculation by revising § 983.623. Section 112 effectuated the change in the subsidy calculation by redefining “rent” to include the family’s monthly debt payments. While section 112 achieves the statutory intent to allow housing assistance payments to assist with the family’s monthly debt payments for the purchase of the home as well as the space rent, characterizing the debt payments to be part of the “rent” creates confusion in the administration of this provision, since these monthly debt payments in reality are independent of the space rent, and have no relation to the normally understood concept and definition of “gross rent” (the sum of the rent to owner plus any utility allowance) that applies to other rent calculations in the HCV program. In order to simplify program administration and more clearly convey the actual intent of the statutory language, HUD is proposing in this rule to use the term “eligible housing expenses” instead of “rent” in the HAP calculation. “Eligible housing expenses” under this proposed rule includes the same expenses and results in the same amount of HAP for the family in accordance with the HOTMA amendment, but does so using terminology that better explains and distinguishes between what the subsidy calculation takes into account as opposed to what the term “rent” normally suggests for PHAs, participating families, and the owners either leasing the space or considering doing so under the HCV program.

In addition to revising the monthly housing assistance calculation, the proposed change would also remove an obsolete reference to a separate fair market rent for a manufactured home space. Since the housing assistance payment now takes the family’s housing costs besides the space rent into consideration in determining the subsidy, it no longer makes sense to publish a

separate “manufactured home space rent” FMR for this special housing type. Instead, the PHA uses its regular payment standard for the HCV program in the housing assistance payment calculation. This change was previously implemented by the FR Implementation Notice.

Section 112 further provided that the PHA may choose to make a single payment to the family for the entire monthly assistance amount, rather than making the assistance payment directly to the owner of the manufactured home space the family is renting. HUD has not yet implemented this option. In addition to the changes in § 982.623 for the revised subsidy calculation, HUD is proposing a new paragraph to implement this single housing assistance payment to the family option. Under this proposed rule, if the owner of the manufactured home space agrees, the PHA may make the entire housing assistance payment to the family, rather than making the payment to the owner. Because the assistance payment now covers family housing costs beyond the space rent, in many instances the PHA would be paying an assistance payment to both the owner of the space rent and the family under this special housing type. Under the single payment to the family option, the family would be responsible for paying the owner directly for the full amount of the rent of the manufactured home space. The PHA and the owner must still execute a HAP contract and the owner is still responsible for fulfilling all the owner obligations under the HAP contract.

The HOTMA provisions related to the exclusion of the family’s manufactured home from the prohibition of the family having a present ownership interest in real property that is suitable for occupancy by the family, and the exclusion of the equity in the family’s manufactured home from the net family assets, is being implemented through a proposed rule published September 17, 2019, at 84 FR 48820.

11. HCV Homeownership Option (§§ 982.625, 982.628, 982.630, 983.635, 982.641)

HUD is proposing several non-HOTMA related changes to the HCV homeownership special housing type under Subpart M. The HOTMA provisions related to the exclusion of the family's HCV homeownership unit from the prohibition of the family having a present ownership interest in real property that is suitable for occupancy by the family, and the exclusion of the equity in the family's homeownership unit from the net family assets, is being implemented through a proposed rule published September 17, 2019, at 84 FR 48820.

*a. PHA-owned units (§ 982.628(d))*

HUD is proposing to make a clarifying change to § 982.628(d) to reference the definition of a PHA-owned unit in the proposed § 982.4.

*b. Homeownership counseling (§ 982.630(e))*

The regulation currently allows a PHA to use a housing counseling agency that is not approved by HUD if the PHA ensures that the counseling program of such agency is consistent with the homeownership counseling provided under HUD's Housing Counseling program. HUD is proposing to revise the homeownership regulation to conform with current Housing Counseling requirements, which require any homeownership counseling to be conducted by a HUD-certified housing counselor working for a HUD-approved housing counseling agency. HUD believes that the homeownership counseling is a critical component for the success of the HCV homeownership program and believes this proposed change will help ensure that the counselor and the counseling meet acceptable standards.

*c. Amount and distribution of HAP (§§ 982.635(b), 982.641(f))*

Currently, the utility allowance amount for a homeownership family is based on the lower of the size of the home purchased or the family unit size per PHA subsidy standards. The proposed rule would require that the utility allowance for a homeownership family always be

based on the size of the home purchased. This will minimize the possibility of default when the family composition changes in the home because the amount of the family's expenses for purposes of calculating homeownership assistance will still reflect the actual utility allowance for which the family is responsible.

The proposed rule also proposes to restructure the payment standard provisions and clarify that the payment standard amount used to calculate the family's homeownership assistance cannot be lower than what the payment standard was at the start of homeownership assistance. This is the current requirement, but HUD is proposing to refine the wording of the regulation so that the requirement is more easily understood.

#### 12. PBV: When the tenant-based voucher rule applies (§ 983.2)

*Unit size and utility allowance schedule.* The regulation governing the utility allowance schedule for tenant-based assistance (§ 982.517(d)) requires the PHA to use the utility allowance for the lesser of the unit size rented by the family or the unit size per PHA subsidy standards (the size of the voucher). This provision is not applicable to the PBV program, because a family residing in a PBV-assisted unit must be housed in a unit consistent with the family unit size per the PHA subsidy standards. PBV regulations currently state at § 983.2(c)(3) that § 982.517 applies to the PBV program in its entirety. HUD proposes to make a technical correction to expressly provide that § 982.517(d), which states that the PHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the family unit size as determined under the PHA subsidy standards, is not applicable to the PBV program. This change would further clarify that the PHA continues to use the utility allowance for the unit size leased by a family for the period of time prior to a family's move to an appropriately sized

unit, in cases in which a family is in a wrong-sized PBV-assisted unit due, for example, to a change in family size.

Other technical fixes. HUD has taken this opportunity to clarify that § 982.201(e) does not apply to the PBV program. Section 982.201(e) provides that the PHA must receive information verifying that an applicant is eligible within the period of 60 days before the PHA issues a voucher to the applicant. However, voucher issuance is one of the HCV provisions that does not apply to the PBV program. HUD has also revised § 983.251(a)(2) to clarify that the PHA determines eligibility for admission of an applicant family (other than a voucher participant determined eligible at original admission to the voucher program) within 60 days before commencement of PBV assistance.

### 13. PBV Definitions (§ 983.3)

For administrative ease and convenience, the proposed rule would revise the PBV definitions section to include those part 982 terms that are also used in part 983. In limited cases, where there is a slight PBV distinction to the part 982 term, an annotation would be made in this section.

In addition to adding the applicable terms that are defined in part 982, the following terms would be added: applicant, areas where vouchers are difficult to use, in-place family, participant, tenant selection plan, transferee, and waiting list admission. The terms applicant, in-place family, participant, tenant selection plan, and waiting list admission were terms previously used but not defined in the regulation.

The following previously defined terms would be revised to conform to the HOTMA changes: Agreement to enter into a HAP contract, development activity (formerly “development”), excepted units, existing housing, newly constructed housing, rehabilitated



housing, and Request for Release of Funds. Also, the term admission would be revised to specify the date of admission for families that were not previously admitted to the HCV tenant-based program.

*Areas where vouchers are difficult to use.*

HOTMA establishes exceptions to the percentage limitation and income-mixing requirement for projects located in areas where vouchers are “difficult to use.” HUD requested comments on this provision on the January 18, 2017, notice, though it did not implement the provision at that time. Commenters offered a variety of suggestions for how HUD might define areas where vouchers are “difficult to use” such as: rental vacancy rates; voucher lease-up success rates; areas with rapid rent appreciation; areas undergoing revitalization; and high-cost areas. Ultimately, HUD would adopt the following definition in this proposed rule: (1) A ZIP code area where the rental vacancy rate is less than 4 percent; or (2) A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan FMR. HUD took into consideration the ideas submitted but determined that many of them would be administratively burdensome to determine and/or monitor and, in some cases, not determinable for a specific area of a PHA’s jurisdiction. Instead, HUD is proposing two factors that are easily identifiable and consistent data points.

Question 12. HUD seeks feedback on this proposal, which defines areas where vouchers are difficult to use as areas where costs are high relative to metropolitan area FMRs. Keeping in mind that HUD wants the definition to be fairly straightforward (i.e., not involving a complex calculation), is there a better way to identify such areas?

*Existing housing*

With respect to the definition of existing housing, HUD is concerned that the current definition is overly broad. The current definition of “existing housing” is housing that exists on the proposal selection date and “substantially complies” with HQS on that date. By further defining what is meant by “substantially complies,” HUD intends to provide greater clarity to PHAs and prospective owners regarding whether a property may be selected as “existing housing” or must undergo rehabilitation prior to being placed under a HAP contract. This distinction becomes even more critical as this proposed rule is also implementing the HOTMA provision that eliminates the environmental review requirement for PBV existing housing in certain circumstances.

On June 25, 2014, at 79 FR 36145, HUD published a final rule making conforming changes to regulations as a result of the Housing and Economic Recovery Act of 2008 (HERA), entitled, “Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs” (HERA Final Rule). In that rule, HUD left the current definition of “existing housing” in place, while the preamble explained that HUD would continue to determine if changes were appropriate:

HUD will further consider what may be the best metric for determining compliance with HQS; that is, whether HUD should measure the amount of time that must pass from the date of selection to date of compliance or identify an appropriate dollar standard of the total amount of work that must be performed, or determine some other mechanism. HUD will resubmit for public comment any proposed changes to the definition of existing housing.

HUD is using this proposed rule to propose changes to the definition of existing housing as provided in the HERA Final Rule preamble. Under this proposed rule, the definition of

existing housing would be revised to define “substantially complying” with HQS as a unit that has HQS deficiencies that require only minor repairs to correct (repairs that could reasonably be expected to be completed within 48 hours of notification of the deficiencies). To qualify as existing housing, all proposed PBV units in the project must reasonably be expected to be in compliance with HQS within 48 hours of notification. Furthermore, to qualify as existing housing, the project is ready to go under HAP contract with minimal delay—after the unit inspections are complete, all proposed PBV units not meeting HQS could be brought into compliance to allow PBV HAP contract execution within 48 hours.

The distinction between PBV existing housing and PBV rehabilitation under the proposed rule is, at its essence, based on whether the units in their “as-is” condition either meet or can meet (with minimal repairs and little or no delay in HAP contract execution) the Housing Quality Standards, which would allow the PHA to promptly execute the PBV HAP contract with the owner. If the repairs are extensive in nature, or if the number of units that require repairs is so large that the HAP contract execution cannot occur within a relatively short amount of time, then the appropriate type of PBV for the project is rehabilitation.

HUD believes that this standard, which is based on the time the HQS repairs could reasonably be expected to take as the measure of substantial compliance and how promptly the project would be able to be placed under HAP contract, has advantages over the use of a dollar threshold because of the variation of repair costs across the country and because a cost measure would need to be adjusted periodically to reflect cost increases. It would also provide a common-sense standard — for a project to qualify as existing housing for PBV assistance, any repairs needed to bring the units into HQS compliance would have to be relatively minor in nature and

easily completed. Any project requiring more extensive and time-consuming repairs would not qualify as existing housing and instead would be subject to the PBV rehabilitation requirements.

The current definition provides that the existing units must fully comply with the HQS before execution of the HAP contract. Since that requirement will not apply if the PHA is using either the alternative inspection or NLT option in fulfilling the initial HQS inspection requirements for the PBV existing housing project, HUD is proposing to revise the definition to state that the units must meet the pre-HAP inspection requirements, as opposed to HQS, prior to HAP execution.

Question 13. HUD seeks comment on the proposed change to the definition of existing housing. Is the 48-hour standard reasonable, particularly for larger projects? Are there better alternative definitions of existing housing that would meet the objective of more clearly providing uniformity as to whether a project qualifies as existing housing? HUD also seeks comment on whether the definition should be tightened to prevent the circumvention of rehabilitation program requirements by selecting a project as existing housing when significant work is needed for the property to comply fully with HQS. For example, a previous proposed definition of existing housing provided that to qualify as existing housing, the owner must not be planning to perform rehabilitation work on the units within one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than \$1,000 per assisted unit.

Question 14: The proposed and current definition of “project” is statutory and must be used to determine PHA compliance with the income-mixing requirement. HUD has applied this statutory definition to the PBV program in general for the sake of administrative consistency.

Should HUD adopt a different definition of “project” for other elements of the PBV program? If so, what definition should HUD adopt, and for which program elements?

#### 14. Cross-reference to other Federal Requirements (§ 983.4) – Labor Standards

The proposed rule would make changes to the description of labor standards to conform to the changes made elsewhere in the rule regarding the applicability of Davis-Bacon wage rates to the PBV program. Please see the detailed preamble discussion concerning the proposed Davis Bacon change in § 983.210, below.

#### 15. Description of PBV program (§ 983.5)

The proposed rule would revise § 983.5(a)(3) to conform it to changes made elsewhere in the rule that newly constructed or rehabilitated housing may be developed with or without an Agreement. Please see the below preamble discussion on the proposed change to implement the HOTMA provision that PBV housing may be developed without an Agreement if certain requirements are met at § 983.155.

The rule would also make another conforming change to § 983.5(d) to reference the new section on PBV provisions in the Administrative Plan that is proposed at § 983.10 and discussed later in this preamble. Finally, HUD is also proposing to revise this section to clarify that PBV assistance may be attached to both single-family and multifamily buildings, and that HCV administrative fee funding made available to the PHA is used for both the administration of tenant-based and project-based assistance.

#### 16. Maximum amount of PBV assistance (§ 983.6)

HUD implemented the HOTMA PBV program limit provisions through the FR Implementation Notice. HUD is proposing to substantially revise § 983.6 to codify the new HOTMA requirements in the 24 CFR part 983 program regulations.

HOTMA changed the methodology used to calculate the PBV program limit from a budget authority percentage to a unit count, meaning that a PHA may project-base up to 20 percent of its authorized voucher units. This proposed rule updates § 983.6(a) to reflect that change. Notwithstanding the change in the program limit methodology, PHAs would still be responsible for determining that they have sufficient funding available to support the vouchers they are planning to place under a PBV HAP contract.

HOTMA also authorizes a PHA to project-base an additional 10 percent of its authorized voucher units, but only for units that serve the homeless, veterans, provide supportive housing to persons with disabilities or elderly persons, or are located in areas where vouchers are difficult to use. HOTMA also authorizes a PHA to project-base an additional 10 percent of its authorized voucher units, but only for units that serve the homeless, veterans, provide supportive housing to persons with disabilities or elderly persons, or are located in areas where vouchers are difficult to use. Under this proposed rule, solely for purposes of applying the additional 10 percent veterans exception to the PBV program cap, the term “veteran” means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, which is the definition of veteran defined by 38 U.S.C. 101. For purposes of determining this statutory cap exception, the term veteran needs to have a standard definition that is applied consistently by PHAs across the program. This definition does not preclude a PHA from applying the term “veteran” differently for other purposes of program administration. For example, the PHA could choose to apply a broader standard as to who would qualify as a veteran when establishing a local preference for admissions for veterans. However, under this proposed rule in order for a PBV unit to qualify for the 10% exception on the basis that the unit is designated for veterans, the veteran must be a person who served in the active

military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

These additional units are covered by proposed changes in § 983.6(d). In addition, HUD would add a proposed definition of “areas where vouchers are difficult to use” to § 983.3, which is discussed in detail in section 13 of the section-by-section summary..

Commenters on the FR Implementation Notice suggested that other categories of units (e.g., units that need preservation) should be made eligible for project-basing under the 10 percent exception; HUD however lacks the authority to except units that are not specified in statute.

Commenters also stated that limiting the exception to contracts that were first executed on or after April 18, 2017, as provided in the FR Implementation Notice, penalizes PHAs who have already made efforts to serve the populations favored with the exception. HUD lacks the statutory authority to apply the exception retroactively to units that were under contract prior to April 18, 2017. After further considering these comments, however, HUD proposes to allow units that are added to an existing contract under § 983.207(b) and are eligible for the exception to qualify for the exception, even if the existing contract itself was executed prior to April 18, 2017.

HOTMA excludes certain categories of units from this program limitation entirely (these are referred to in the proposed regulation as units excepted from the program cap and project cap). Please see the discussion concerning these units later in this preamble under § 983.59.

Lastly, under the current regulation at § 983.6(d), a PHA must submit information to HUD prior to issuing a request for proposals or otherwise selecting a project for an award of PBVs. The intent of the requirement is to assure that PHAs determine whether any new selection

will push them above the statutory cap on project-basing. Taken as a whole, HOTMA significantly complicates this calculation through the number of different ways a cap may be expanded, or may not apply to a unit. In this proposed rule, HUD would eliminate the requirement at § 983.6(d) and establish a new § 983.58 that would state all the scenarios under which a PHA must perform calculations prior to project-basing additional units of assistance.

#### 17. PBV provisions in the Administrative Plan (§ 983.10)

The proposed rule would redesignate the current § 983.10, Project-based certificate (PBC) program, as § 983.11 and add a new § 983.10 to contain Administrative Plan requirements unique to the PBV program. It would define areas in which the PHA has discretion to establish policies with respect to such things as the PHA's standard for deconcentrating poverty and expanding housing and economic opportunity, waiting list management, and whether the PHA will retain the use of an Agreement for new construction/rehabilitation. The list provided in the rule is not intended to be an all-inclusive list; instead, the list highlights the major policy areas where the PHA has some discretion.

#### 18. Project-based certificate (PBC) program (§ 983.11)

HUD is proposing to redesignate § 983.10, Project-based certificate (PBC) program, to § 983.11. There are no proposed changes to the text.

#### 19. Prohibition of excess public assistance (§ 983.12)

HUD is proposing to add a new section as part of an effort to better organize and clarify the subsidy layering requirements for the PBV program. Currently, the subsidy layering requirements are found in § 983.55, which is found in Subpart B, Selection of PBV Owner Proposals. The prohibition of excess public assistance applies only to newly constructed and rehabilitated housing after the project is selected and placed under HAP. In order to better



clarify the current requirements and to consolidate information related to development requirements, HUD is proposing to add a new § 983.12 that speaks generally to the prohibition of excess public assistance for PBV new construction and rehabilitated housing. The new section would refer readers to § 983.153(b) for the requirements related to placing new construction and rehabilitated housing under HAP contract. In addition, this new section would include language (currently found in the PBV HAP contract for new construction and rehabilitated housing) that the owner must disclose information to the PHA regarding any additional related public assistance that is made available with respect to the contract units during the term of the PBV new construction and rehabilitation HAP contract. In those instances, a new subsidy layering review would be required to determine if the additional assistance would result in excess public assistance in the project. The PHA must adjust the housing assistance payments to the owner if the additional public assistance results in excess public assistance to the project.

As is currently the case and in accordance with section 8(o)(13)(M)(i) of the 1937 Act, under this proposed rule the subsidy layering requirements never apply when a PHA is attaching PBV assistance to existing housing, either prior to HAP contract execution or during the term of the contract.

#### 20. Owner proposal selection procedures (§ 983.51)

HOTMA authorizes a PHA that is engaged in an initiative to improve, develop, or replace a public housing property or site to attach PBV assistance to an existing, newly constructed, or rehabilitated structure in which the PHA has an ownership interest or over which the agency has control without following a competitive process, as long as the PHA has notified the public of its intent to do so through its PHA Plan. While the PHA must have ownership interest in or control over the project to attach PBV assistance to it without following a competitive process, it is

important to emphasize that having “ownership interest” in the project does not mean that the unit must meet the definition of PHA-owned unit. An ownership interest means that the PBV PHA or its officers, employees, or agents are in an entity that holds any direct or indirect interest in the project in which the units are located, including but not limited to an interest as: titleholder, lessee, stockholder, member, or general or limited partner; or member of a limited liability corporation. A PHA ownership interest also includes cases where the PBV PHA is the lessor of the ground lease for the land upon which the PBV project is located. With this proposed rule, HUD proposes to codify this HOTMA provision in the 24 CFR part 983 regulations, which was previously implemented in the FR Implementation Notice. In § 983.51(c) under the proposed rule, the PHA may select a project in their public housing inventory, or a project that may have been removed from the public housing inventory through any available legal removal tool within 5 years of the proposal selection date. In accordance with § 983.54, Prohibition of assistance for units in subsidized housing (redesignated as § 983.53 in this proposed rule), the PHA may not attach or pay PBV assistance until the public housing units are removed from the public housing inventory. HUD would also make clear in this proposed rule that newly developed or replacement housing developed under this authority need not be on the same site as the original public housing, in contrast with replacement units for which a PHA is claiming an exception from the PBV program and project caps (see § 983.59(d)).

HUD is also proposing to eliminate the \$25,000 per unit cost requirement for rehabilitation and new construction that was part of the initial implementation requirements for this HOTMA provision in the FR Implementation Notice by not proposing it in this rule. The purpose of the cost test was to ensure that the PHA was truly engaged in an initiative to improve the public housing project or site and not simply avoiding following the competitive selection

process by undertaking minor repairs at the project. However, by its very nature, a PBV new construction project is replacing the public housing project, which fulfills the HOTMA requirement that the PHA is engaged in an initiative to improve, develop, or replace the public housing project or site. Likewise, if the project will be assisted through PBV for rehabilitated housing, the rehabilitation that is undertaken in order to attach the PBV assistance to the project constitutes an initiative to improve the project.

In addition, HUD is also proposing, at § 983.51(c)(2), to allow a PHA that is engaged in an initiative to improve, develop, or replace a public housing property or site to attach PBV assistance to an existing, newly constructed, or rehabilitated structure without following a competitive process in cases where the PHA has no ownership interest or control over the site but where the PHA is administering the PBV assistance because the public housing project in question is owned by another PHA that does not administer the HCV program. The public housing project must either still be in the public housing inventory or removed from the public housing inventory through any available legal removal tool within 5 years of the proposal selection date. In addition, the PBV assistance must have been specifically identified as the 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. HUD believes under these limited circumstances the administering PHA should be able to attach the PBV assistance to the public housing project without following a competitive process since the conversion of the project to PBV assistance was part of the overall plan approved by HUD to reposition the project and preserve it as affordable housing for the public housing residents and the community.

HUD is proposing several non-HOTMA related clarifications to this section. HUD would add a reference to the required PHA inspections that must occur prior to the proposal selection that are covered elsewhere in the regulation since those requirements are a key component of the proposal selection process (§ 983.51(e)). HUD is also proposing to define the proposal selection date (§ 983.51(g)). For projects selected through a request for proposals or based on a previous competition, the proposal selection date would be the date on which the PHA provides written notice to the party that submitted the selected proposal. For former public housing projects selected without a competitive process, the date of proposal selection would be the date of the PHA's board resolution approving the project-basing of assistance at the specific project. This change is intended to ensure that the date of selection is consistently applied in relation to a project's eligibility for selection based on a previous competition or without regard to a competitive process. Finally, the proposed rule would add a new paragraph (k), which serves as a reminder that 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 programs.

Question 15: Are there other situations that should be exempt from competitive selection requirements? For example, should HUD also exempt the placement of project-based vouchers that are used to replace previously federally assisted or rent-restricted properties from competitive selection requirements?

#### 21. Prohibition of assistance for ineligible units (§ 983.52)

HUD would redesignate § 983.53, Prohibition of assistance for ineligible units, as § 983.52. HUD is proposing to delete the current § 983.52, Housing Type, cover the definition of

existing housing in § 983.4, and incorporate the provisions currently found at §983.52(a)(1) and (2) into the newly designated § 983.52(d). HUD would also revise § 983.52(d) in this proposed rule to conform with the proposed implementation of the PHA option to undertake PBV development without an Agreement under § 983.155 that is discussed later in this preamble.

#### 22. Prohibition of assistance for units in subsidized housing (§ 983.53)

HUD would redesignate § 983.54, Prohibition of assistance for units in subsidized housing, as § 983.53. There are no proposed changes to the current text.

#### 23. Cap on number of PBV units in each project (§ 983.54)

HOTMA made significant changes to the PBV project cap (also known as the income-mixing requirement) that determines how many units in a particular project may be PBV assisted. These HOTMA changes were implemented by the FR Implementation Notice. HUD is proposing to modify the PBV regulation (most notably at §§ 983.54 and 983.262) to conform to all of these statutory changes as implemented in the FR notice.

In this proposed rule, HUD would redesignate § 983.56, Cap on number of PBV units in each project, as § 983.54 and revise § 983.54 to codify the following HOTMA requirements:

Under HOTMA, the project cap is whichever number is greater: 25 units or 25 percent of units (assisted or unassisted) in the project. This means that a project with 25 or fewer units may be fully assisted with project-based vouchers, provided all other PBV requirements are met.

HOTMA also makes changes to the exceptions to the project cap. Prior to HOTMA, dwelling units specifically made available to elderly families, disabled families, and families receiving supportive services were excepted from the project cap. HOTMA retains the exception for elderly families, modifies the exception for families receiving supportive services so that families must simply be “eligible for” supportive services, and eliminates the exception for

disabled families, while grandfathering in the exception for projects that were under a PBV HAP contract prior to April 18, 2017. HOTMA also excluded certain categories of units from the project cap entirely (these are referred to in the proposed regulation as units excepted from the program cap and project cap and discussed at § 983.59 below). HOTMA also allowed a higher (40 percent) project cap in two scenarios: where the project is in a Census tract with a poverty rate of 20 percent or less, and where the project is in an area where vouchers are difficult to use. As stated previously, the definition of “areas where vouchers are difficult to use” has been added to § 983.4.

Public comments in response to the January 18, 2017, notice were mostly in the context of the supportive services exception. Several commenters stated that failure to complete a Family Self-Sufficiency (FSS) contract should not result in termination and eviction of the family. HUD addressed this comment in the July 14, 2017, technical corrections notice, explaining that current FSS requirements do not allow termination from the housing assistance program for failure to complete the FSS contract of participation. Accordingly, in this rule HUD also proposes to remove the provision at § 983.257(b), which permitted lease termination by the owner where a family failed to complete its FSS contract without good cause. As is the case under the FR Implementation Notice, the proposed rule would also clarify that a PHA that administers an FSS program may use FSS as part of its supportive services package in meeting the project cap supportive services exception. However, the PHA may not rely solely on FSS in meeting the exception. A PHA could, however, make the supportive services used in connection with the FSS program available to non-FSS PBV families at the project.

Other commenters proposed that HUD should not require supportive services to be made available to all families in a project, but that the services should be made available just to those

units designated as supportive housing units. HUD is unable to implement such a change through regulation because it would be in conflict with the current statutory language.

The proposed rule would also clarify, as stated in the January 18, 2017, notice, that HAP contracts in effect prior to April 18, 2017, remain obligated by the terms of those HAP contracts with respect to the requirements that apply to the number and type of excepted units in a project, unless the owner and the PHA mutually agree to change those requirements. HUD has also taken this opportunity to propose to specify that the PHA has discretion to determine whether to except units and the number of units to be excepted (see § 983.54(d)). The proposed rule would remove the reference to combining exception categories in a project. This is because while a PHA may offer both the elderly and the supportive services exception categories at a project, the supportive services exception requires that the supportive services be available to all PBV-assisted families at the project, making such combination provision irrelevant.

The proposed rule would revise § 983.262, When occupancy may exceed the project cap, to codify the HOTMA changes regarding the project cap. Because these changes are so closely related to the proposed revisions to § 983.54, they are described in detail both here and later in the preamble discussion at § 983.262. In § 983.262(b), the proposed rule would clarify that while a PHA may establish criteria for occupancy of particular units in ensuring that excepted units are occupied by a family who qualifies for the exception, families who will occupy excepted units must be selected through an admissions preference. Section 983.262(c) would set forth the requirements for the supportive services exception to apply. The unit would be 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. Also, if any member of the family successfully completes the supportive services, the unit would continue to be excepted for as long as any

member of the family resides in the unit. The unit would only lose its excepted status if no member of the family successfully completed the supportive services and the entire family becomes ineligible during the tenancy for all supportive services that are made available to the residents of the project.

The proposed § 983.262(c) would provide that a family may not be terminated from the program or evicted from the unit when the unit loses its excepted status. Under this proposed rule, the § 983.262(d) (formerly (e)) requirements concerning wrong-sized units would be revised to remove the reference to disabled family members since, under HOTMA, there is no longer an exception to the income mixing requirement for disabled families. The current regulatory provisions continue to apply under the proposed rule to excepted elderly units in cases where the elderly family member no longer resides in the unit but the PHA allows the remaining family members to remain in the unit. The proposed regulation (in § 983.262(f)) also addresses the options available to the PHA when an excepted unit loses its excepted status.

Question 16. Does the proposed rule sufficiently address the project cap requirements in relation to a unit losing its excepted status?

Question 17. Should other options not considered by the proposed rule be available to the PHA when a unit loses its excepted status?

Question 18. Does the regulation clearly convey how FSS may be used in meeting the supportive services exception?

#### 24. Site selection standards (§ 983.55)

HUD would redesignate § 983.57, Site selection standards, as § 983.55. There are no changes to the regulatory text.

#### 25. Environmental review (§ 983.56)



HUD would redesignate § 983.58, Environmental review, as § 983.56. HUD is proposing to revise the environmental review requirements for existing housing in accordance with section 106(a)(8) of HOTMA. Section 106(a)(8) of HOTMA amended section 8(o)(13)(M)(ii) of the 1937 Act, which addresses environmental reviews for existing PBV projects. The provision in the 1937 Act was originally added by section 2835 of the Housing and Economic Recovery Act (HERA),<sup>5</sup> and read as follows:

A public housing agency shall not be required to undertake any environmental review before entering into a housing assistance payments contract under this paragraph for an existing structure, except to the extent such a review is otherwise required by law or regulation.

However, as HUD explained in the November 24, 2008, Federal Register notice implementing HERA changes, the original statutory provision was problematic in that it exempted PHAs, which do not undertake environmental reviews, instead of responsible entities or HUD, which do the reviews. In addition, environmental reviews are always conducted as a result of a statutory or regulatory requirement. The notice concluded that the HERA provision did not eliminate any environmental reviews.<sup>6</sup>

HOTMA addressed the second of these two problems, by requiring reviews when the review is required by law or regulation “relating to funding other than housing assistance

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<sup>5</sup> Public Law 110-289, approved July 30, 2008.

<sup>6</sup> See 82 FR 5458.

payments.”<sup>7</sup> Therefore, any environmental reviews required just because of the provision of HAP would no longer be required. However, the language of HOTMA still left in place the part of the 1937 Act that exempted PHAs instead of responsible entities. A basic canon of statutory construction is that a statutory provision should be read so as to give every word meaning.<sup>8</sup> Accordingly, despite the continued presence of the word “PHA”, HUD is seeking to give effect to the apparent intent of Congress expressed in HOTMA. While it is the responsible entity that actually undertakes the environmental review, HUD believes that Congress referred to PHAs in the provision because they are responsible for ensuring that the required review has been conducted before undertaking a project or activity. Thus, rather than rendering the statutory provision (and the subsequent amendment in HOTMA) a nullity, the reference to PHAs emphasizes that it is these entities that will be held accountable by HUD for compliance with the environmental review requirements prior to undertaking an activity.

In endeavoring to give full effect to the words of section 8(o)(13)(M)(ii) of the 1937 Act, HUD is also cognizant that the statute provides only a partial exemption to environmental reviews. Specifically, the applicability of the provision would be limited to “existing projects.” Environmental reviews would continue to be applicable to PBV rehabilitation and new construction projects. The limited scope of the proposed exemption from environmental reviews

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<sup>7</sup> Section 106(a)(1) of HOTMA also changed the word “structure” to “project” throughout paragraph 8(o)(13) of the 1937 Act. Consequently section 8(o)(13)(M)(ii) as amended by HOTMA reads “(ii) Environmental review.—A public housing agency shall not be required to undertake any environmental review before entering into a housing assistance payments contract under this paragraph for an existing project, except to the extent such a review is otherwise required by law or regulation relating to funding other than housing assistance payments.”

<sup>8</sup> See *Alaska Department of Environmental Conservation v. EPA*, providing that a statute should be construed so that, “if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant” (540 U.S. 461, 489 n.13 (2004)).

reflects Congress's continuing emphasis on the importance of Federal assistance being used in an environmentally sound manner. For example, statutory provisions authorizing HUD to waive, or establish alternate, statutory requirements explicitly exclude environmental, labor, and fair housing statutory requirements.<sup>9</sup>

Another generally accepted principle of statutory construction is that the words of statutory provisions should be read so as to avoid results inconsistent with expressed congressional intent.<sup>10</sup> A superficial reading of the statutory provision would exempt all existing projects where PBV assistance is being added from environmental review and only require that newly constructed and rehabilitated housing comply with environmental requirements, even if such existing project had never had an environmental review performed. Such a reading appears to be in contravention of Congress's oft-repeated intent that housing assisted with site-based rental assistance comply with Federal environmental review requirements. To avoid what HUD believes is this unintended consequence, this rule proposes to allow an exemption 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. HUD

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<sup>9</sup> See, e.g., the Rental Assistance Demonstration (RAD) Program in the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55, approved Dec. 23, 2011); and appropriations for the Community Development Block Grant Disaster Recovery programs in Public Laws 115-23 (approved April 13, 2017) and 115-72 (approved October 16, 2017).

<sup>10</sup> See Church of the Holy Trinity v. United States, 143 U.S. 457 (1892).

believes this reading strikes the appropriate balance between granting PHAs relief from the burden of duplicative environmental reviews while ensuring that all HUD assistance complies with Federal environmental standards.

Question 19. HUD recognizes that properties that were previously Federally assisted and conducted their environmental reviews long ago may not be able to access documentation proving the review was conducted. How should HUD ensure that a review was conducted for those properties? Should HUD revise the requirement so that any existing PBV project that was formerly federally assisted and would have been subject to a federal environmental review (and an environmental review is not otherwise required by law or regulation related to funding other than PBV housing assistance) would qualify for the exception regardless of whether any environmental review documentation is available?

Question 20. How administratively burdensome will it be for owners to demonstrate that an environmental review was conducted for the project in the past? Is such information readily available to a project owner, even if the environmental review may have been conducted many years ago?

Question 21. Should the final rule establish a time limit for accepting environmental reviews conducted for previously Federally assisted properties? For example, if the environmental review for such a property was conducted 25 years ago, should HUD require that a new review be conducted? If such a limit is appropriate, what should the time limit be?

Question 22. HUD's legal reading of section 8(o)(13)(M)(ii)—upon which the proposed implementation of the PBV existing housing exception from environmental review requirements is based—is that the intent of the statute is not to except all existing PBV projects from environmental reviews but rather to balance the PBV existing exception against Congress's

intent that HUD-assisted housing comply with Federal environmental review requirements. Are there alternative approaches to striking this balance that would be preferable to HUD's proposed implementation of the environmental review exception for PBV existing projects? For example, project-based vouchers may be attached to existing projects with non-Federal affordable housing financing. HUD is interested in what non-Federal financing and financial closing also include review of contamination screening, floodplain management, flood insurance map reviews, or other environmental risk mitigation requirements. Are there site suitability reviews that occur in the non-Federal assistance context that would address HUD's concerns that PBV assistance is not attached to buildings or sites that pose potential risks to the residents' health and safety or the viability of the project?

#### 26. PHA-owned units (§ 983.57)

HUD would redesignate § 983.59, PHA-owned units, as § 983.57. The redesignated § 983.57 governs the selection of PHA-owned units and the role of independent entities in operating such units in the PBV program. Most of the changes in this section are intended to improve readability. However, § 983.57(b)(1) would specify that, in addition to determining the rent to the owner, the independent entity must determine OCAF adjustments. This is a new responsibility for the independent entity, resulting from the HOTMA provision that allows for rent adjustments under the PBV program using an OCAF established by the Secretary and published in the Federal Register. HUD is proposing to implement the OCAF option in this rule at § 983.302(b)(2); please see the related discussion on the OCAF rent adjustment option later in this preamble.

Additionally, in § 983.57(b)(4), HUD is proposing that, when PHAs carry out development or rehabilitation of PBV PHA-owned units, the PHA must submit evidence to the

independent entity that the work has met applicable requirements. HUD believes the determination that the development or rehabilitation of the PHA-owned PBV project has met the applicable requirements should be added to the responsibilities of the independent entity. The PHA, as the owner of the PBV project, has a conflict in making that PHA determination for the HAP contract to be executed.

#### 27. PHA determination prior to selection (§ 983.58)

Under the current regulation at § 983.6(d), a PHA must submit information to HUD prior to issuing a request for proposals or otherwise selecting a project for an award of PBVs. The intent of the requirement is to assure that PHAs determine whether any new selection will push them above the statutory cap on project-basing. Taken as a whole, HOTMA significantly complicates this calculation through the number of different ways a cap may be expanded or may not apply to a unit. In this proposed rule, HUD would eliminate the requirement at § 983.6(d) and establish a new § 983.58 that states all the scenarios under which a PHA must perform calculations prior to project-basing additional units of assistance. Under the proposed § 983.58, the PHA would determine, in accordance with the program limit requirements at § 983.6, if it is able to project-base additional vouchers before it issues a request for proposals or makes a selection based on a previous competition, attaches assistance without competition in accordance with the proposed requirements of § 983.51(c) of this rule, or when it amends a current HAP contract to add units in accordance with § 983.207(b).

#### 28. Units excepted from program cap and project cap (§ 983.59)

HOTMA excepts certain types of units from both the program cap and the project cap. These are units that were previously subject to certain federal rent restrictions or that were receiving another type of long-term housing subsidy provided by HUD. HUD implemented the

exception for these units as part of the FR Implementation Notice. Because the lists for both exceptions are the same, HUD proposes to establish a new § 983.59, which would list the types of units that are covered by the exceptions in §§ 983.6 (program cap) and 983.54 (project cap). Also, in response to comments received on the January 18, 2017, notice, HUD has 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 FR Implementation Notice: (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). In addition to listing the covered units, the proposed rule would codify the existing FR Implementation Notice requirement that the unit must have received one of the covered forms of HUD assistance or been subject to one of the covered federally required rent restrictions in the 5 years prior to the date of the request for proposals or the date of selection (without competition or a selection based on a prior competition).

As was provided under the FR Implementation Notice, HUD is also proposing to exclude HUD-VASH vouchers specifically designated by HUD for project-based assistance from the PBV program limits and project caps. The proposed rule would also clarify that PBV units under the Rental Assistance Demonstration (RAD) are not subject to the program limitation or project caps.

Finally, the proposed rule would address the issue of when newly constructed units developed under the PBV program may be excluded from the program limitation and project cap because they are replacing units that meet the criteria of excepted units because the units were formerly subject to federal rent restrictions or were receiving HUD assistance. As is the case under the FR Implementation Notice, the newly constructed unit would have to be located on the

same site as the unit it is replacing; however, expansion or modification to the prior project's site boundaries is acceptable under certain conditions. In addition, the primary purpose of the newly constructed units would be required to replace the previous federally assisted or rent-restricted eligible units. The PHA would be able to demonstrate compliance with this requirement by giving former residents of the original project a selection preference that provides the residents with the right of first occupancy at the PBV new construction project, or, prior to the demolition of the original project, identifying the PBV new construction project as replacement housing as part of a documented plan for the redevelopment of the site.

While HOTMA significantly expands the potential number of vouchers that may be project-based through this broad exception policy, PHAs considering increasing their use of project-basing are cautioned that all other PBV requirements apply to these formerly federally assisted or rent-restricted excepted units, including that a family occupying the PBV unit still has the right to move with tenant-based assistance after 12 months of occupancy. Section 8(o)(13)(E) of the 1937 Act (42 U.S.C. 1437f) provides that a PHA must provide HCV tenant-based assistance or comparable tenant-based assistance to a family that seeks to exercise this right. If such assistance is not immediately available, then the PHA must provide the family with priority to receive the next voucher (or other tenant-based assistance) that becomes available. PHAs with large percentages of PBV units as a result of these exceptions may find it increasingly challenging to reach families on the tenant-based waiting list, as families moving under the statutory mobility requirements of the PBV program have priority over waiting list families for the next available voucher.

Question 23. HUD recognizes that PBV assistance can be an effective tool to preserve affordable project-based housing units in a community. However, HUD is concerned about the



unintended consequences that over-use of this broad and unlimited exception authority may have in terms of the PHA's ability to meet its obligations to provide families with tenant-based vouchers when they wish to exercise their statutory right to move from the PBV unit with tenant-based assistance. Since these families are given priority for the next available voucher, this concern also has significant implications for families on the tenant-based waiting list and the PHA's ability to address the local needs and priorities of their communities through the reissuance of turnover vouchers. HUD seeks comment on this issue. For example, should PHAs that wish to project-base vouchers 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 (or other voucher assistance) available within a reasonable period of time for eligible PBV families that wish to move? What other approaches should be considered to address this concern? Is there a specific threshold in terms of the overall percentage of vouchers that are project-based where the PHA and/or HUD should focus on the potential impact on the availability of tenant-based assistance to provide PBV families with a meaningful opportunity to move with tenant-based assistance?

#### 29. Housing quality standards (§ 983.101)

HUD is proposing to make a conforming change to § 983.101(e) as part of the changes to implement the HOTMA provision that permits the PHA to enter into a PBV HAP contract with an owner that is under construction or recently has been constructed whether or not the PHA and owner sign an Agreement (see preamble discussion below at § 983.155). This change would remove the requirement that any additional requirements for quality, architecture, or design of PBV housing established by the PHA must be specified in the Agreement (since there is no Agreement if the PHA opts not to require the Agreement).

### 30. Inspecting units (§ 983.103)

As discussed previously in this preamble, HOTMA made significant changes to the inspection requirements for both HCV tenant-based and project-based assistance. Please see the description of all the HOTMA section 101 changes to the unit inspection requirements in § 982.305. HUD is proposing to change § 983.103 to codify the PBV-related inspection requirements previously implemented under the FR Implementation Notice, as well as proposing new requirements to implement the HOTMA HQS enforcement and family relocation provisions that were not covered by the notice.

This proposed rule would revise § 983.103 to codify the initial inspection options (NLT and alternative inspections) that were implemented under the FR Implementation Notice. However, HUD proposes in this rule to limit the use of the NLT and alternative inspection options to existing housing. Regarding the NLT deficiencies initial inspection option, HUD's view is that the provision of PBV assistance for new construction or rehabilitation is intended to increase the supply of affordable housing that is decent, safe, and sanitary. HUD's expectation, therefore, is that newly constructed or rehabilitated units will fully meet Housing Quality Standards (i.e., such units will have no HQS deficiencies).

With respect to the use of an alternative inspection option for the initial HQS inspection, HUD cannot identify a scenario under which a PHA could realistically rely on an alternative inspection completed prior to the rehabilitation. The unit, by virtue of the rehabilitation, is no longer in the same condition as it was at the time of the alternative inspection. Furthermore, if the rehabilitation was done improperly, then the unit may have unsafe conditions that did not exist at the time of the alternate inspection. As for newly constructed units, the alternative

inspection provision does not appear to be a viable option, because, prior to construction, the units did not exist.

Similar to the proposed change for HCV tenant-based assistance in § 982.406, HUD is proposing to change the time frame by which the PHA must conduct its own inspection of the unit for existing PBV housing under the initial HQS inspection alternative inspection. For both tenant-based and project-based units under this proposed rule, the PHA would be required to conduct HQS inspections on all the assisted units within 30 days of the project selection date, as opposed to the 15-day standard established under the FR Implementation Notice.

HUD also proposes clarifying changes to § 983.103 to expressly provide the timeframes within which the PHA must conduct an inspection when notified of a potential life-threatening or non-life-threatening deficiency in a PBV unit. If the family or a government official notifies the PHA of a potentially life-threatening deficiency, the PHA would have to inspect the unit within 24 hours and notify the owner if the life-threatening deficiency is confirmed. If the reported condition is non-life-threatening, the PHA would have to inspect the unit, and provide the owner notification if the deficiency is confirmed, within 15 days. The rule further proposes that the owner may provide photographic evidence or other reliable evidence to the PHA in order for the PHA to verify that a defect has been corrected.

In addition to codifying the HOTMA initial inspection options for PBV, § 982.103 would be revised for clarity regarding the inspection of units prior to proposal selection (§ 983.103(a)) and HAP contract execution (§ 983.103(b)). These clarifying changes would also include revising the text to incorporate the proposed new definition for PBV existing housing, which is discussed in subsection 13 of the section-by-section summary.

The current regulation requires the independent entity to provide a copy of the inspection report for a PHA-owned PBV unit to the PHA and to the HUD field office. To reduce administrative burden, HUD proposes to remove the requirement that the report be provided to the HUD field office, instead proposing to require that the independent entity or PHA must provide the report to the field office upon request.

Question 24. HUD requests comment on the use of the NLT and alternative inspection options for PBV new construction and rehabilitation. Are there circumstances where it would be acceptable for a newly constructed or rehabilitated PBV unit to fail to meet HQS once the construction or rehabilitation was completed, making the NLT a reasonable option for PHAs? Are there circumstances where the alternative inspection option can fulfill the initial HQS inspection requirements for PBV rehabilitation or new construction?

### 31. Applicability (§ 983.151)

HUD is proposing to substantially restructure Subpart D (§§ 983.151 through 983.157). HUD solicits comment on the reorganization of this subpart, which is intended to provide clarity regarding the applicability of development requirements. Section 983.151 would be revised to better express Subpart D's purpose, which is to set forth the requirements related to development activity under the PBV program, including those requirements related to development activities undertaken on units that are under HAP contract (discussed below at § 983.157).

### 32. Nature of Development Activity (§ 983.152)

A new § 983.152 would explain which sections and requirements of Subpart D are applicable to an owner undertaking development activity for the purpose of either placing a project under a HAP contract (newly constructed and rehabilitated housing) or, in the case of a partially assisted project (e.g., a project that includes both PBV-assisted and unassisted units), in

order to add additional additional units additional in the project to the PBV HAP contract. (A new § 983.157 would cover when development activity may be undertaken for units assisted under a HAP contract and what requirements apply.) All the development requirements under § 983.153 would apply to development activity undertaken to place newly constructed or rehabilitated housing under a HAP contract. For development activity undertaken to add previously unassisted units in the project to a HAP contract, the development requirements related to equal employment opportunity, accessibility, and broadband infrastructure would apply, as applicable.

### 33. Development Requirements (§ 983.153)

In this rule HUD is proposing to re-designate § 983.154, Conduct of Development Work, as § 983.153, and re-title the section “Development Requirements.” HUD believes that consolidating the development requirements in one section of the regulations will provide greater clarity and ease of understanding to PHAs and owners.

The development requirements described in this section would include subsidy layering reviews (see the related discussion at § 983.12), labor standards (please see the discussion regarding Davis-Bacon requirements in this preamble at § 983.210), equal opportunity (section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and the implementing regulations at 24 CFR part 135), equal employment opportunity, accessibility, broadband eligibility, and eligibility to participate in federal programs and activities. These requirements are the same requirements that are currently applicable to development activities carried out for newly constructed and rehabilitated housing.

### 34. Development Agreement (§ 983.154)

This section would cover the existing requirements for the Agreement in terms of the timing of the execution of the Agreement and the required contents, which are found in the

current regulations at § 983.152, and implement a new HOTMA provision under which the PHA may choose not to execute an Agreement. HOTMA creates new discretionary authority for a PHA to enter into a PBV HAP contract with an owner for housing that is under construction or recently has been constructed whether or not the PHA and owner sign an Agreement to Enter into a HAP contract (Agreement). The law provides that, even when an Agreement is not used, an owner must be able to demonstrate “compliance with applicable requirements prior to execution of the housing assistance payments contract.” HUD interprets this language to mean that a PHA must affirm, for any work done after proposal submission and prior to proposal selection, that the owner has complied with all such requirements. Once the PHA has affirmed that any work done from the point of proposal submission complies with all such requirements, the two parties may enter into an Agreement—or not. Under either scenario, all work completed from the point of proposal submission forward would have to be developed and completed in compliance with the applicable requirements.

#### 35. Completion of Work (§ 983.155)

HUD is proposing to revise the section, Completion of Work, to conform to the change that the PHA may enter into the PBV HAP contract without first entering into an Agreement. In addition, HUD is proposing that the PHA shall determine the form and manner by which the owner must submit evidence and certify to the PHA that the development activity was completed and all such work was completed in accordance with the applicable requirements, rather than regulation specifying those requirements.

#### 36. PHA acceptance of completed units (§ 983.156)

HUD is proposing to revise this section to conform to the change that the PHA may enter into the PBV HAP contract without first entering into an Agreement.

### 37. Development activity on units under a HAP contract (§ 983.157)

HUD is proposing to add a new section to cover development requirements should the owner undertake development activity on units under HAP contract. HUD recognizes that, given that PBV HAP contracts may be in effect for twenty years or longer, owners may need over the course of the contract to undertake work that meets the definition of development activity. In addition, standards need to be established to prevent the circumvention of development requirements where units are placed under a HAP contract as existing housing even though the owner intends to undertake significant development activity on the assisted units shortly thereafter.

HUD proposes to permit development activity on units currently under HAP contract if the owner is approved to do so by the PHA. However, except in extraordinary circumstances (such as repairs necessitated due to a fire or natural disaster), this would normally occur within the first five years from the effective date of the HAP contract. The owner's request would have to include a description of the proposed development activity and the length of time, if any, that it is anticipated that some or all the assisted units will not meet HQS as a result of the development activity. The owner's request would be required to include a description of how the families will be rehoused during the period that their unit does not comply with Housing Quality Standards because of the development activity. Housing assistance payments would not be made during the time the units are not in compliance with the Housing Quality Standards during the development activity.

The proposed rule would provide that the development requirements for equal employment opportunity, accessibility standards, and broadband infrastructure apply, as applicable. The other development requirements under § 983.153, the Development agreement

requirements at §983.154, and the PHA acceptance of unit requirements at § 983.156 would not apply.

Question 25: HUD is specifically seeking comment on the time period proposed within which development work would not be permitted except in extraordinary circumstances. Is five years within the first five years from the effective date of the HAP contract a reasonable time frame? The intent of establishing such a timeframe is to prevent the circumvention of PBV requirements that apply for PBV rehabilitation projects but not existing housing (e.g., environmental reviews in certain circumstances, subsidy layering reviews, Davis Bacon, etc.) but not to preclude post-HAP execution work that would improve the quality of the housing for the assisted families or to protect the longer-term health and continued viability of the project. Are there alternative time-frames or other approaches that would better balance and address these two concerns? Are there reasonable, routine reasons why an owner may need to or choose to perform development activity within the first five years of the effective date of the HAP contract (please provide examples)?

Question 26: Given that owners of properties under PBV contract will periodically need to undertake development to modernize and rehabilitate properties, has HUD laid out reasonable guidelines for undertaking development activity on units under a HAP contract?

### 38. HAP contract information (§ 983.203)

HUD is proposing to revise § 983.203, HAP contract information, so that the current reference to units that exceed the normally applicable project cap in paragraph (h) accurately reflect the new HOTMA exceptions. Unrelated to HOTMA, the section has proposed revisions to expressly state the features described in the HAP contract provided to comply with program accessibility requirements include those related to the Fair Housing Act and the Americans with



Disabilities Act, as applicable, in addition to section 504 of the Rehabilitation Act. Finally, HUD proposes to require that the PBV HAP contract specify whether the PHA has elected not to reduce rents below the initial rent to owner. The current regulations at § 983.302(c)(2) provide that if the PHA has elected, within the HAP contract, to not reduce rents below the initial rent to owner, the rent to owner may not be reduced below the initial rent except in certain circumstances. However, the current regulation lacks a corresponding provision in § 983.203, which covers HAP contract information. The proposed change would better align the two sections with respect to this HAP contract provision.

### 39. When HAP contract is executed (§ 983.204)

As previously discussed, the proposed rule would address how the PHA executes the HAP contract for a PHA-owned unit for both tenant-based units (§ 982.451(c)) and project-based units (§ 983.204(d)). Please see the earlier discussion at § 983.451(c).

HUD has not provided a HUD-prescribed certification option for the Agreement to Enter into a HAP Contract (Agreement) for PHA-owned units, as it has for the HAP contract. While a PHA may not enter into an Agreement with itself for a PHA-owned unit where the PHA (not a separate legal entity) is the owner, the PHA has the option to not require the Agreement for PBV new construction and rehabilitated projects. The PHA could either create a separate legal entity to execute the Agreement as well as the HAP contract as the owner, or could use its discretion to not require the Agreement. (The PHA as the owner could still decide to voluntarily meet the Davis-Bacon wage requirements if it wanted to do so, regardless of the fact the Davis-Bacon wage requirements are not applicable if the PHA does not require the use of the Agreement. See related discussion concerning the Davis-Bacon requirements at § 983.210.)

HUD is also proposing to conform § 983.204 to address proposed changes related to initial inspections discussed in detail elsewhere in this preamble. HUD is proposing to revise the existing language in § 983.204(a) and (b) to reflect that for PBV existing housing, the PHA may use the initial inspection NLT and alternative inspection options. The language would reflect that the PHA must determine that the applicable pre-HAP contract HQS requirements have been met, rather than specifying requirements that may not be applicable if the PHA implemented and applied either initial inspection option to the PBV existing project.

Likewise, HUD is proposing to revise § 983.204(c) to remove the references to the Agreement for newly constructed or rehabilitated housing in describing the determinations the PHA must make before executing the PBV HAP contract, since elsewhere in this rule HUD is proposing to implement the option under which the PHA may choose not to execute the Agreement for PBV new construction and rehabilitation.

#### 40. Term of HAP contract (§ 983.205)

HUD implemented section 106(a)(4) of HOTMA, which extends from 15 to 20 years the term of an initial PBV HAP contract or contract extension, in the FR Implementation Notice. In codifying this provision in the PBV regulations, HUD proposes to restructure the underlying regulation in § 983.205 to clarify the differences between the initial PBV HAP contract term, the extension of the initial contract term, and subsequent extensions, as suggested in comments on the January 18, 2017, Notice.

In addition to the HOTMA changes related to the initial term and extensions, HUD is also proposing to move the current regulatory provisions at § 983.205(c) and § 983.210(d), which discuss HAP contract terminations, to § 983.206. This proposed change would consolidate all provisions related to contract terminations under § 983.206.

Question 27: With respect to the prohibition against extending a contract beyond 40 years until 24 months prior to the expiration of the HAP contract (§983.205(b)(3)(i)), are there circumstances under which HUD should permit a contract extension prior to that period in order to facilitate needed financing? If so, what period of time would be reasonable for the PHA to determine that such an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities?

41. Contract termination or expiration and statutory notice requirements (§ 983.206)

Section 983.206 currently covers the statutory owner notice requirements to the families and the PHA regarding the termination of the contract. In this proposed rule, HUD is proposing to expand the section to cover two new HOTMA requirements related to the termination of contracts, both of which were previously implemented under the FR Implementation Notice. In addition, HUD is proposing to move a couple of provisions currently found in § 983.205 to § 983.206 to better align the 24 CFR part 983 regulations.

HOTMA requires that the PBV HAP contract must provide that, upon termination or expiration of a PBV HAP contract without extension, each assisted family may elect to remain in the same project with tenant-based assistance, if its unit complies with HUD's Housing Quality Standards, the PHA determines or has determined that the rent for the unit is reasonable, 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. In other words, the family receives the voucher that was previously used to assist the family under the PBV contract and may choose to use the voucher to stay at the project with continued rental assistance if certain conditions are met.

In this proposed rule, at § 983.206(b), HUD would codify these requirements and further specify that this provision applies unless the termination or expiration without extension occurs as a result of a determination of insufficient funding, as described below. If the PHA is terminating the contract because of insufficient funding, the PHA would not have funding to provide the families with tenant-based vouchers for them to elect to either stay or move from the project. The proposed rule would also provide that an owner may not terminate the tenancy of the family that elects to remain at the project with the tenant-based assistance except as the result of a serious or repeated lease violations, or other good cause under § 982.310. (Under § 982.310, the owner may not terminate the tenancy for “other good cause” during the initial lease term, unless the owner is terminating the tenancy because of something the family did or failed to do.)

Question 28. Should the family have the ability to remain in the same unit and not just the same project?

HOTMA also provides that, in the event of insufficient appropriated funding, payments due under HCV or PBV HAP contracts must be made if the PHA is able to implement cost-saving measures that make it possible for the PHA to avoid terminating an existing HAP contract. As of the publication date of this proposed rule, cost-saving measures are governed by Notice PIH 2011–28.

In § 983.206(c) of this proposed rule, HUD would codify that the PHA may terminate a PBV HAP contract only after it determines that it lacks sufficient funding to continue housing assistance payments for all voucher units currently under a HAP contract and has taken appropriate cost-saving measures, as applicable. In addition, HUD would have to determine that the PHA lacks sufficient funding. HUD proposes as well that a PHA must describe in its Administrative Plan the factors it will take into consideration when determining which HAP

contracts to terminate first (e.g., prioritizing protecting PBV HAP contracts over tenant-based HAP contracts or prioritizing protecting contracts that serve vulnerable families or individuals over other contracts when determining which contracts shall be terminated due to insufficient funding). See the related discussion on changes proposed for the PHA HCV administrative plan at § 982.54.

Section 983.206(d) would provide that the owner may terminate the contract when the amount of rent to owner for any contract unit is reduced in accordance with the rent adjustment requirements of § 983.302 below the amount of the initial rent to owner, and the assisted families residing in the assisted units will be offered tenant-based assistance. This provision is currently found in § 983.205(d). HUD is proposing to include a reference that the family may remain in the project with the tenant-based assistance in accordance with the new HOTMA provision. HUD is also proposing to add a sentence that expressly provides that the requirement that the owner provide at least one-year owner notice of the termination of the HAP contract is not applicable to this situation.

#### 42. HAP contract amendments (to add or substitute contract units) (§ 983.207)

The current regulation establishes a three-year window following the execution date of a PBV HAP contract during which units may be added to the contract without a request for proposals. HOTMA eliminates this window, allowing units to be added at any time during the term of a PBV HAP contract, which HUD implemented through the FR Implementation Notice. Section 983.207 of this proposed rule would incorporate the HOTMA change, including specifying that the PHA may not add units if doing so would push the agency out of compliance with the program limitation at § 983.6 or the project cap at § 983.54, and the units must comply with the requirements of the PBV HAP contract (e.g., rents must be reasonable, etc.). In

implementing this provision, HUD is also proposing in § 983.10 to require that a PHA describe in its Administrative Plan the circumstances under which it will consider amending a PBV HAP contract to substitute or add contract units and how those circumstances support the goals of the PBV program. The rule would further clarify that units added to the HAP contract following the execution of the HAP contract must be units that existed and were part of the project when the HAP contract was executed.

HUD is also proposing related changes to two other sections of the 983 regulations, specifically that if the owner undertakes development activity in order to add previously unassisted units to the HAP contract, then certain development requirements may apply (see §§ 983.152 and 983.153). Please see previous preamble discussion related to those sections.

#### 43. Condition of contract units (§ 983.208)

HUD is proposing similar changes to § 983.208 to implement these same HOTMA HQS enforcement and tenant relocation provisions for the PBV program that were discussed earlier in this preamble under § 982.404 for the tenant-based program.

The proposed rule would expand § 983.208(b) to make the change that the unit is not in compliance with HQS not only if the PHA, but also if an inspector authorized by the State or unit of local government, determines upon inspection of the unit that the unit fails to comply with HQS, the PHA or inspector notifies the owner in writing of the failure, and the defects are not corrected within the new statutorily mandated time-frames. Additionally, § 983.208(b) would include a new paragraph implementing the HOTMA standard for HQS deficiencies that are caused by any member or guest of the household, whereby the PHA may waive the owner's responsibility to remedy the violation and require the family to do so. Section 983.208(c) would be revised in similar fashion to § 982.404 to cover when the PHA may

withhold payments and when the PHA must abate the payment and remove a unit from the PBV HAP contract due to HQS deficiencies.

HUD is proposing to allow the PHA to choose to abate payments for the entire PBV HAP contract rather than just the individual unit due to the unit's noncompliance with the HQS. Likewise, the PHA would be permitted to choose to terminate the entire PBV HAP contract, rather than simply removing the unit from the HAP contract, due to noncompliance with HQS, which is consistent with current program requirements. Finally, the same provisions related to the relocation of the family that were discussed in detail in the preamble section on § 982.404 would be added to § 983.208. This proposed change would apply the HOTMA protections to PBV families forced to relocate due to the owner's failure to correct the HQS deficiency, including the PHA's option to use up to 2 months of withheld or abated HAP for costs directly associated with relocating to a new unit, including security deposits or reasonable moving costs.

As explained earlier in the preamble discussion on § 982.404, these HOTMA provisions are set forth in section 8(o)(8)(G) of the United States Housing Act of 1937.

The law provides that these provisions 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 subparagraph (G)." For tenant-based HAP contracts, HUD is interpreting a contract that is "renewed" to mean a HAP contract that has continued beyond the end of the initial lease term. For PBV, HUD is interpreting a contract that is "renewed" to be a contract that has been extended beyond the initial term of the contract. For contracts that were not entered into or renewed after the effective date of the regulations, §§ 982.404 and 983.208 in effect as of the date before the effective date of the final rule will remain in effect.

Unlike tenant-based HAP contracts, the transition period between when a HAP contract executed before the effective date and the final rule and its actual renewal may be quite lengthy in the PBV program. HUD understands that this adds complexity to the administration of PBV HAP contracts, particularly for PHAs that may be administering multiple PBV HAP contracts, some of which will be covered by the newly revised § 983.208 while others remain under the regulation as it stood prior to the effective date of the final rule. The applicability of subparagraph (G) is statutory, and as a result HUD may not conform all PBV HAP contracts to the new enforcement standards and tenant protections under that subparagraph through this rulemaking.

#### 44. Owner certification (§ 983.210) – Davis Bacon, other conforming changes

HUD proposes to remove § 983.210(j), which provides that by execution of the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract, that repair work on project selected as an existing project that is performed after HAP execution within such post execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be completed in compliance with Davis-Bacon wage requirements.

Section 12 of the 1937 Act mandates the use of Davis-Bacon wage rates in the “development” of low-income housing projects, including projects under section 8 of the 1937 Act, with nine or more assisted units where there is an agreement for use of Section 8 program funds before the construction or rehabilitation begins.

In this proposed rule, HUD is proposing to return to its requirements prior to a final rule, published June 25, 2014, at 79 FR 36146, regarding Davis-Bacon applicability and PBV. Specifically, the proposal would apply Davis-Bacon wage rates in the PBV program to



“rehabilitated” and “newly constructed” housing where an Agreement covering nine or more assisted units is entered into between the PHA and the owner. Within this context, under the proposal, PBV “existing housing” would not be covered by Davis-Bacon. This approach long pre-dates the PBV program. Predecessor Section 8 project-based assistance programs conditioned applicability of Davis-Bacon on execution of an Agreement prior to rehabilitation or construction. In contrast, HUD programs that applied to “existing housing” did not require an “Agreement,” and Davis-Bacon wage rates did not apply.

The 2014 final rule substantially redefined the meaning of “agreement” for Davis-Bacon purposes and provided for application of Davis-Bacon to PBV “existing housing” under certain conditions. In particular, HUD revised the cross-reference to labor standards in 24 CFR 983.4 to remove the reference to labor standards “applicable to an Agreement” covering nine or more assisted units and substitute a reference to labor standards “applicable to development (including rehabilitation) of a project comprising” nine or more assisted units. HUD stated that this language “clarifies that Davis-Bacon requirements may apply to existing housing (which is not subject to the agreement) when the nature of any work planned to be performed prior to HAP contract execution or after HAP contract execution, within such post-execution period as may be specified by HUD, constitutes development of the project.” Subsequent guidance from HUD specified that “work that constitutes remodeling that alters the nature or type of housing units in a PBV project, reconstruction, or a substantial improvement in the quality or kind of original equipment and materials” conducted within 18 months after the effective date of the HAP

contract counted as “development” and was therefore subject to Davis-Bacon wage requirements.<sup>11</sup>

The implication of this is that under the 2014 final rule, HUD may require Davis-Bacon wages both: (i) where the rehabilitation occurs prior to the owner entering into a HAP contract or any agreement for subsequent Section 8 use; and (ii) where the rehabilitation occurs within 18 months after the effective date of the HAP contract, regardless of whether the receipt of the assistance is conditioned upon the completion of the rehabilitation.

After careful consideration of the differing views on this subject, HUD has concluded that the pre-2014 PBV requirements, rather than the requirements contained in the June 25, 2014, final rule, are more consistent with the express terms of section 12 of the 1937 Act. In the first instance, where rehabilitation occurs prior to the execution of a HAP contract or any agreement for subsequent Section 8 use, the statutory requirement that there be “an agreement for such [Section 8] use before the construction or rehabilitation is commenced” cannot be satisfied under the 2014 final rule. In the second instance, the sole focus on temporal proximity of the rehabilitation to the assistance agreement allows HUD to require Davis-Bacon even in those instances where the agreement for assistance is not conditioned upon the completion of the rehabilitation. This is inconsistent with the intent of section 12 and is inconsistent with the otherwise longstanding HUD practice of allowing owners of existing housing to engage in rehabilitation of Section 8-assisted housing without triggering Davis-Bacon wage requirements.

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<sup>11</sup> Applicability of Davis-Bacon Labor Requirements to Projects Selected as Existing Housing Under the Section 8 Project-Based Voucher Program—Guidance, published March 9, 2015 at 80 FR 12511.

In addition, the application of Davis-Bacon wage rates to federally supported housing is a large federal regulatory cost on housing production.

HUD acknowledges that the broad, open-ended definition of “existing housing” in 24 CFR 983.3 has proven insufficient to ensure that PHAs properly classify PBV housing types and contributed to some of the Davis-Bacon issues that the June 25, 2014, final rule attempted to address. In order to remedy this problem, HUD has proposed a much more specific and tighter definition of “existing housing,” which is discussed in subsection 13 of this preamble.

In addition, the amendment made by section 106(a)(4) of HOTMA, discussed in subsection 34 of this preamble, may significantly impact Davis-Bacon coverage. This provision amends section 8(o)(13)(F) of the 1937 Act to allow a PHA to enter into a HAP contract for housing to be rehabilitated or newly constructed whether or not the PHA has entered into an Agreement, provided that the owner demonstrates compliance with “applicable requirements” prior to execution of the HAP contract. Thus, HOTMA allows rehabilitation or new construction to occur in the absence of an Agreement. In these cases, under HUD’s proposal to construe the reference to “an agreement for such [Section 8] use” in section 12 of the 1937 Act to refer exclusively to an Agreement, Davis-Bacon would not apply. In this rule, HUD is proposing to provide the PHA with discretion to decide whether to require the Agreement (per § 983.155(e)). HUD recognizes that permitting the PHA to exclude all rehabilitation and new construction PBV projects from Davis-Bacon requirements by not requiring use of the Agreement may be viewed as an unintended consequence of HOTMA’s elimination of the need for an Agreement.

Question 29. Should the PHA have the flexibility to exclude rehabilitation or new construction of PBV projects from Davis-Bacon coverage? Given the language in HOTMA that

does not require an Agreement, should HUD still require Davis-Bacon coverage for new construction and rehabilitation through an alternate document?

HUD is also proposing a conforming change to § 983.210(c) to reflect the fact that eligible families may be selected from an owner-maintained waiting list if applicable, rather than referred to the owner by the PHA. Please see the preamble discussion on owner-maintained waiting lists at § 983.251.

#### 45. Removal of unit from HAP contract (§ 983.211)

HUD is proposing a conforming change to § 983.211(c) to reflect the fact that families may be selected from an owner-maintained waiting list, rather than be referred to the owner by the PHA. Please see the related preamble discussion on the proposed implementation of the HOTMA provision allowing for owner-maintained site-based waiting lists at § 983.251.

#### 46. How participants are selected (§ 983.251)

Section 106(a)(7)(B) of HOTMA provides that a PHA (or owner, if the owner maintains a site-based waiting list as discussed further below) may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA Plan. HUD implemented this provision of HOTMA in the FR Implementation Notice. HUD proposes to revise § 983.251(d) to cover PHA and owner preferences for families that qualify for these voluntary services. As previously implemented under the FR Implementation notice, a key component of the changes that the proposed rule provides is that the preference is for families who qualify for the voluntary services offered at a particular project. Prior to the effective date of this HOTMA provision on April 18, 2017, PHAs were required to provide the preference to any

disabled family who needed the voluntary supportive services, regardless of whether the family was eligible to receive the services.

While PHAs and owners would be permitted provide the preference for families that qualify for disability-specific services, the current prohibition on granting preferences to persons with a specific disability at § 982.207(b)(3) would continue to apply. Furthermore, the HOTMA provision specifically provides that the selection preference is for families that qualify for voluntary services, including, but not limited to, disability-specific services. Families may not be required to accept the particular services offered at the project, and the preference may not be based on the family's agreement or commitment to accept the offered services. The preference may only be based on whether the family qualifies for the services offered in conjunction with the assisted unit. These preference requirements apply regardless of whether the preference is for a PBV excepted unit or a PBV non-excepted unit.

The current regulatory restrictions at § 983.251(d)(1) that limit the services preference only to a population of families with disabilities that (i) significantly interfere with their ability to obtain and maintain themselves in housing, (ii) who would not be able to obtain or maintain themselves in housing, and (iii) for whom such services cannot be provided in a non-segregated setting would be eliminated in this proposed rule. HOTMA does not put limits or conditions of this nature on the families that may receive the preference or the supportive services, including disability-specific services, that may be offered in conjunction with the assisted unit, other than that those services must be voluntary. However, the PHA would still have to ensure that the PBV project complies with all applicable Fair Housing and Civil Rights requirements, including but not limited to the requirement to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities under section

504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (see 24 CFR 8.4(d) and 28 CFR 35.130(d)). Additionally, the PBV project where Medicaid-funded home and community based services will be offered as part of “disability-specific services” 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”).

HOTMA also authorizes the use of owner-maintained, site-based waiting lists for PBV units. Under current requirements, while a PHA may have project specific PBV waiting lists, such waiting lists must be maintained by the PHA, and the owner can assist only eligible families referred by the PHA from the PHA’s waiting list. This proposed rule would implement the HOTMA provision that would allow an owner to maintain the PBV waiting list for a project. HUD did not implement this provision under the FR Implementation Notice and instead reserved its implementation for this rulemaking process. In addition, HUD is proposing several non-HOTMA related changes to § 983.251.

The proposed rule at § 983(c)(7) would detail the roles and responsibilities for the PHA and if the PHA decides to allow the owner to maintain the site-based waiting list. Under 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. HUD is proposing that PHAs may choose to use owner maintained PBV waiting lists for specific owners or projects. In other words, the PHA would not have to allow all owners to maintain the waiting list for their PBV projects. The rule proposes to allow the PHA to permit an owner to manage a single waiting list that covers multiple projects owned by the owner.

If a PHA decides to let an owner maintain the site-based waiting list, HUD is proposing that the owner must develop and submit a written tenant selection plan to the PHA for approval. The tenant selection plan would have to include the policies and procedures the owner must follow in maintaining the waiting list, including any preferences for admission. The PHA must incorporate the approved owner tenant selection plan into the PHA's Administrative Plan.

Under the proposed rule, applicants may apply directly at the project instead of at the PHA. The PHA may choose to delegate the responsibility of making a preliminary eligibility determination for purposes of placing the family on the waiting list and determining the family's eligibility for any preference for the site-based waiting list, or the PHA may continue to carry out those responsibilities for the owner-maintained waiting list. Regardless of whether the PHA delegates this responsibility to the owner, the PHA would always be responsible for conducting any informal review for the applicant.

Under the proposed rule, the owner may not determine the family's final program eligibility. This would always be a PHA administrative responsibility. Related to owner maintained waiting lists, the proposed rule would also revise § 983.254 to establish that, in cases where an owner-maintained waiting list is used, 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 then make every reasonable effort to promptly make such final eligibility determination. Also, while owners would be required to follow all waiting list administration program requirements, including the public notice requirements of § 982.206 when opening the waiting list, the proposed rule would also require the owner to follow such public notice requirements in the limited cases where the owner-maintained waiting list is already open and additional applicants are needed to fill vacant units. Other technical changes

have been proposed to other parts of the regulation (§§ 983.210(c), 983.211(c), and 983.253(a)) to conform with the proposed provision authorizing the PBV program.

The PHA would be responsible for oversight of any owner-maintained waiting lists to ensure they are administered properly and in accordance with all program requirements, including fair housing requirements. The owner would have to give the PHA, HUD, and the Comptroller General full and free access to its offices and records concerning the waiting list. Finally, the rule proposes that HUD may take enforcement actions against either the owner or the PHA, or both parties, for any program violations related to the owner-maintained waiting list.

The proposed rule would also clarify that the income-targeting requirements apply to owner-maintained waiting lists for the PBV program.

HUD is proposing to make several non-HOTMA related changes and clarifying edits to § 983.251, How participants are selected. Specifically, HUD is proposing to reorganize and revise § 983.251(b) for greater clarity. As in current regulations, the proposed rule would continue to afford PHAs discretion to determine how to structure the PBV waiting list (whether a single waiting list for the entire PBV program, a project-specific waiting list, or as part of its HCV waiting list). The PHA would be able to choose to use a combination of these options. For example, the PHA may choose to use a central PBV waiting list for some PBV projects (either using a dedicated PBV waiting list or as part of the tenant-based waiting list) and use project-specific waiting lists for the other PBV project(s) in its portfolio. In the case of project-specific waiting lists, the PHA would have discretion to determine whether the owner will maintain such waiting lists.

HUD is also proposing to expand this subsection to specifically address situations where the in-place family is a tenant-based voucher participant. These are not new requirements but



clarify how the related requirements in § 982.310(d) concerning when the owner may terminate the tenant-based tenancy come into play in terms of protections for in-place families under the PBV program. This proposed rule would provide that during the initial term of the lease, the in-place tenant-based voucher family may agree but is not required to mutually terminate the lease with the owner and enter into a PBV lease. If the family is not willing to terminate the tenant-based lease during the initial term, the owner would not be permitted to terminate the lease for other good cause, unless the owner is terminating the tenancy because of something the family did or failed to do. The owner would not be permitted to terminate the tenancy during the initial lease term because the family is unwilling to terminate the lease and accept the owner's offer of a new lease under the PBV program, and the unit may not be added to the PBV HAP contract during that time. The proposed rule would further provide that, after the initial term of the tenant-based lease, the owner may choose not to renew the lease or may terminate the tenant-based lease for other good cause, and the family would be required to move with their tenant-based voucher or could choose to stay if they were willing to give up their tenant-based voucher and enter into the PBV lease at that time.

The current regulation addresses the impact of a family's rejection of the PBV offer or the owner's rejection of the family based on a family's position on the tenant-based waiting list, but it does not address the impact on a family's position on the PBV waiting list. The proposed rule would give discretion to the PHA to determine in its Administrative Plan the number of offers a family may reject before the family is removed from a central PBV waiting list. Likewise, the PHA's Administrative Plan would be required to address whether an owner's rejection will affect the family's place on a central PBV waiting list. Where a project-specific PBV waiting list is used, the family's name would be removed from the project-specific waiting

list connected to the family's rejection of the offer or the owner's rejection of the family.

Likewise, the family's place on the tenant-based waiting list would not be affected regardless of which type of PBV waiting list is used.

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?

Question 31. The proposed regulation at § 983.251 addresses the roles and responsibilities of the owner and the PHA when owner-maintained waiting lists are used. Are there any additional areas concerning this topic that require further clarification?

#### 47. PHA information for accepted family (§ 983.252)

HUD has taken this opportunity to propose clarifications to the requirements concerning the oral briefing and the information packet the PHA is required to provide to a family selected for the PBV program. These are all non-HOTMA related changes. Specifically, HUD proposes that the oral briefing must include information on the family's right to move. With respect to the information packet, the proposed regulation would require PHAs to include information on federal, state, and local equal opportunity laws. Lastly, HUD proposes that the information packet must include information about the PHA's subsidy standards, including when the PHA will consider granting exceptions. This requirement is consistent with the information packet requirements of the HCV program. HUD expects that most PHAs already provide such information to PBV families.

#### 48. Leasing of contract units (§ 983.253)

HUD is proposing a conforming change to § 983.253(c) to reflect the fact that under this proposed rule, families could be selected from an owner-maintained waiting list, rather than be referred to the owner by the PHA. Please see the related preamble discussion on the proposed

implementation of the HOTMA provision allowing for owner-maintained site-based waiting lists at § 983.251.

In addition, HUD is proposing a non-HOTMA related change to § 983.253(a)(3), which would require that when a PBV owner rejects an applicant and notifies the applicant in writing of the grounds for the rejection, the owner must also provide the PHA with a copy of the written notice. HUD believes that this information is important for the PHA to have in cases where an owner has rejected an otherwise eligible applicant for a vacant PBV unit.

#### 49. Vacancies (§ 983.254)

HUD is proposing conforming changes to § 983.254 to reflect the fact that families could be selected from an owner-maintained waiting list, rather than be referred to the owner by the PHA. Please see the related preamble discussion on the proposed implementation of the HOTMA provision allowing for owner-maintained site-based waiting lists at § 983.251.

As discussed previously in the preamble section on § 983.251, the owner would not determine the family's final program eligibility as part of the owner's responsibilities for an owner-maintained site-based waiting list. The final eligibility determination for an applicant family would always be a PHA administrative responsibility. HUD is consequently proposing to revise § 983.254 to reflect that if an owner maintained waiting list is used, 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, and the PHA must then make every reasonable effort to promptly make such final eligibility determination.

Finally, HUD is proposing to revise § 983.254(a) to expressly provide that both the PHA and the owner must make reasonable, good-faith efforts to minimize the likelihood and length of any vacancy. This general requirement would cover any circumstance where there is a vacant

PBV unit, regardless of whether the PHA is administering the waiting list directly or has implemented an owner-maintained site-based waiting list for the vacancy in question.

Question 32. What would be a reasonable timeframe for the PHA to complete this final eligibility determination?

#### 50. Owner termination of tenancy and eviction (§ 983.257)

As previously discussed in this preamble at § 983.54, Cap on number of PBV units in each project, current FSS requirements do not allow termination from the HCV program for failure to complete the FSS contract of participation. Accordingly, HUD proposes to remove the outdated provision at § 983.257(b), which permitted lease termination by the owner where a family failed to complete its FSS contract without good cause. This proposed change would conform the regulation to the current FSS program requirements, the HOTMA-related provision that the exception from the cap on the number of PBV units in each project for supportive services is dependent on the services being voluntary, and that tenants may not have their tenancies terminated because they decline to accept (or choose to no longer accept) the voluntary supportive service offered in conjunction with the assisted unit.

#### 51. Security deposit: Amounts owed by tenant (§ 983.259)

The regulation governing security deposits currently gives PHAs discretion to prohibit an owner from charging PBV-assisted tenants a higher security deposit than the private market practice or higher than what the owner would charge unassisted tenants. Unrelated to HOTMA, HUD is proposing to revise the regulation by removing the PHA discretion to prohibit this practice of charging HCV families a higher security deposit and instead prohibit it in all cases. This would provide consistency with rent reasonableness requirements, where assisted families cannot be charged a higher rent than unassisted families.

52. Overcrowded, under-occupied, and accessible units (§ 983.260)

HUD is proposing several non-HOTMA related changes to § 983.260. To provide certainty regarding the amount of time a family may remain in a wrong-sized unit or an accessible unit with features that the family does not need, the proposed rule would establish a timeframe of 30 days for the PHA to notify the family and owner that the family is in such a unit. (See 24 CFR 8.27 of the current regulations for further explanation of occupancy of accessible units.) Also, while the PHA would continue to set the time within which a family must move out of the unit when the PHA offers a form of continued assistance other than an HCV, the proposed rule would establish a maximum of 90 days within which a family must move. HUD also proposes restructuring the section to make the requirements clearer.

Question 33. Are these proposed timeframes reasonable?

53. When occupancy may exceed the project cap (§ 983.262)

The proposed rule would revise § 983.262, When occupancy may exceed the project cap, to codify the HOTMA changes to project cap limits. In § 983.262(b), the proposed rule would clarify that, while a PHA may establish criteria for occupancy of particular units in ensuring that units excepted from the project cap are occupied by a family who qualifies for the exception, families who will occupy excepted units must be selected through an admissions preference. Please see the related discussion at § 983.54 above in this preamble.

As discussed previously in the preamble discussion on the project cap at § 983.54, § 983.262(c) would set forth the requirements for the HOTMA supportive services exception to be applicable to a unit. The unit would be 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. Also, if any member of the family successfully completes the supportive services, the

unit would continue to be excepted for as long as any member of the family resides in the unit. The unit would only lose its excepted status if no member of the family successfully completed the supportive services and the entire family becomes ineligible during the tenancy for all supportive services that are made available to the residents of the project. The proposed § 983.262(c) would also provide that a family may not be terminated from the program or evicted from the unit when the unit loses its excepted status.

Under this proposed rule, the § 983.262(d) (formerly (e)) provisions concerning wrong-sized units would be revised to remove the reference to disabled family members since, under HOTMA, there is no longer an exception to the PBV unit project cap for disabled families. The current regulatory provisions would continue to apply under the proposed rule to excepted elderly units in cases where the elderly family member no longer resides in the unit but the PHA allows the remaining family members to remain in the unit. Finally, the proposed regulation (in § 983.262(f)) would cover in detail the options available to the PHA when an excepted unit loses its excepted status.

Question 34. Does the proposed rule sufficiently address the project cap requirements in relation to a unit losing its excepted status?

Question 35. Should other options not considered by the proposed rule be available to the PHA when a unit loses its excepted status?

Question 36. Does the regulation clearly convey how FSS may be used in meeting the supportive services exception?

#### 54. Determining the rent to owner (§ 983.301)

HUD is proposing to make several non-HOTMA related changes to § 983.301(f), Use of FMRs and utility allowance schedule in determining the amount of rent to owner.

First, the current regulation states that a PHA must use the same utility allowance schedule for both its tenant-based and project-based programs. HUD is proposing to allow a PHA to request HUD field office approval to establish a project-specific utility allowance (for example, based on a flat fee charged by an owner or a third-party determination of actual or projected utility costs) for a project assisted under the PBV program. HUD will direct PHAs to use the process used for PBRA described in Notice H 2015-04 unless PIH promulgates guidance specific to the PBV program. The use of a project-specific utility allowance is intended to assure that payments to tenants for utilities more closely reflect actual utility costs.

HUD is aware that a project-specific utility allowance that under-estimates the actual costs of utilities will have a negative impact on families. Therefore, the proposed change would further provide that the PHA request must demonstrate that the utility allowances used in its voucher program would either create an undue cost on families (because the utility allowance provided under the voucher program is too low), or that use of the utility allowances will discourage conservation and efficient use of HAP funds (because the utility allowances provided under the voucher program would be excessive if applied to the project). The PHA would have to submit an analysis of utility rates for the community and consumption data of project residents in comparison to community consumption rates; and a proposed alternative methodology for calculating utility allowances on an ongoing basis. In addition, under this proposed change, HUD may establish additional standards or requirements for the PHA requests through a Federal Register notice subject to public comment. This would allow HUD to further refine the information and documentation that is needed based on experience over time without having to change the regulation, while still ensuring that any such requirements have the benefit of public comments before being implemented.

Question 37. How could HUD streamline its utility allowance policies across the RAD PBV, traditional PBV, and HCV programs?

Question 38. Should HUD permit the use of a site-specific utility allowance schedule for the HCV program? Is there additional information, including utility consumption data sources, that HUD should consider in setting utility allowance policy?

Second, HUD is proposing several clarifying changes that to better reflect how the current requirements, in § 888.113(c)(5) and § 888.113(h) for Small Area FMRs and project-based vouchers and the requirements at § 982.503 for exception payment standards, determine the amount of rent to owner under the PBV program. Specifically, the proposed change would clarify that for any area in which SAFMRs are in effect, a HUD-approved exception payment standard amount will apply to the PHA's project-based voucher program only if the PHA has adopted a policy applying SAFMRs to its PBV program (see § 888.113(h)).

#### 55. Redetermination of rent to owner (§ 983.302)

HOTMA authorizes a PHA and owner to agree that a PBV HAP contract will be adjusted by an annual operating cost adjustment factor (OCAF), subject to the applicable PBV cap on the rent to owner and the rent reasonableness requirement. HUD is proposing to implement this change by revising § 983.302(b) under this rule. Under HOTMA, this OCAF option applies only to PBV HAP contracts that were entered into after the date of enactment of HOTMA (July 29, 2016).

The proposed rule would provide that a rent increase may occur as the result of an owner request or, if both parties agree and provided for in the HAP contract, through an automatic adjustment by an operating cost adjustment factor. However, regardless of the method of the adjustment, the rent increase could not result in a rent that exceeds the maximum rent for the



PBV project, as determined by the PHA pursuant to § 983.301. Except for certain tax credit units, the rent to owner must not exceed an amount determined by the PHA, which in accordance with the statutory provision in section 8(o)(13)(H) of the 1937 Act may not exceed the lowest of 110 percent of the FMR (or any exception payment standard approved by HUD under paragraph (1)(D))) for the unit bedroom size minus any utility allowance, the reasonable rent, or the rent requested by the owner. For example, if the rent to owner is capped by the PHA at 105 percent of the FMR, the owner would be unable to receive an OCAF adjustment that results in rents above this level.

Question 39. Should HUD permit a PHA and owner to agree to OCAF adjustments up to the maximum level permitted by the statute without regard to the cap adopted by the PHA, as long as rents remain reasonable?

In the event an annual OCAF adjustment fails to increase a property's rent up to the maximum level established by the PHA, HOTMA states that an owner may request an additional adjustment up to that level. Lastly, HOTMA states that, in the case of a PBV HAP contract that is adjusted by an OCAF, the contract must require an adjustment, if requested, up to the maximum level established by the PHA, at the point of contract extension. These HOTMA provisions are included in the proposed changes to § 983.302(b) to implement the OCAF adjustment option.

In addition to the HOTMA changes discussed above, HUD is also proposing to make the following non-HOTMA-related change to § 983.302(c), regarding the PHA option not to reduce PBV rents below the initial rent to owner. The regulation currently allows PHAs to elect within the HAP contract not to reduce PBV rents below the initial rent to owner but does not specifically address the timing of such election. The proposed rule would allow a PHA to make

such an election at any time during the term of the HAP contract. The proposed rule would also clarify that if rents have already been reduced below the initial rent to owner, then the PHA may not make such an election as a way to increase the rents. If rents increase (pursuant to a rent increase under § 983.302(b)) above the initial rent to owner, then the election would once again become available to the PHA. Additionally, the proposed rule would make a technical change to this provision by removing the following phrase: “for dwelling units under the initial HAP contract.” HUD believes this phrase may be misconstrued to limit a PHA’s ability to make the “rent floor” choice only during the initial term of a HAP contract, or only for units covered under an initial HAP contract. To avoid such confusion, the phrase would be removed.

#### 56. Reasonable rent (§ 983.303)

To reduce administrative cost and burden, HUD proposes to eliminate the requirement that the independent entity furnish a copy of its determination of reasonable rent for PHA-owned units to the HUD field office. HUD would retain the requirement that the independent entity furnish this information to the PHA.

HUD is also proposing a conforming change in § 983.303(f) to revise the existing reference to 983.59 to 983.57, as that section would be redesignated as § 983.57 under this proposed rule.

#### 57. Purpose and applicability (§ 985.1)

The proposed rule includes a revision to 24 C.F.R. § 985.1(b) to make clear that SEMAP applies to the PBV program in the same manner in which it applies to the former project-based certificate program. Specifically, SEMAP applies to the PBV program to the extent that PBV family and unit data are reported and measured under the stated HUD verification method.

#### 58. Indicators, HUD verification methods, and ratings (§ 985.3)

HUD is proposing a change to § 985.3(i), to correct the current reference to § 982.503(c)(iii). The reference should read § 982.503(c)(3).

### **Additional Requests for Comment**

In addition to the provision-specific questions above, HUD is specifically soliciting comment on the following general questions.

Question 40. HUD is not proposing any changes to the existing 24 CFR § 983.261 (Family Right to Move). Is § 983.261 clear? If not, what needs to be clarified?

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.

Question 42. Under HUD's Rental Assistance Demonstration, PBV assistance may be transferred from one site to another. Should HUD establish a new regulatory provision in part 983 governing transfers of assistance from one project to another? If so, what factors should HUD take into consideration in developing such a provision?

Question 43. To make progress on eliminating regulatory barriers as reflected in the E.O. 13878, HUD is seeking public comment as it relates to this proposed rule to take productive steps in this policy area, if applicable. Given that the funding to support PBVs is a valuable resource to increase/preserve affordable housing units in communities, what, if any, policies related to PBVs could HUD consider to incent communities to reduce local regulatory barriers (e.g., prohibit impact fees on PBVs, increase by-right zoning, reduce affordable housing permitting) that would effectively decrease the cost of developing and producing housing? In addition, if HUD were to explore the need for data collection in this area, what are some existing PBV-related community level data that HUD could collect to help inform future policy making?

### **III. Findings and Certifications**

#### **Regulatory Review—Executive Orders 12866 and 13563**

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 Executive Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”

This proposed rule would update HUD regulations for the HCV and PBV programs to conform to changes made by HOTMA. These changes include alternatives to HUD’s housing quality standard 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 proposed 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 an initial Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the proposed rule. HUD’s RIA is part of the docket file for this rule, which is available for public inspection at [www.regulations.gov](http://www.regulations.gov).

#### **Executive Order 13771**

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. This proposed rule is considered an EO 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule’s RIA.

### **Information Collection Requirements**

The information collection requirements contained in this proposed 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 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](http://www.regulations.gov).

### **Impact on Small Entities**

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 the proposed 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 proposed rule revises HUD regulations in certain ways that will reduce the burden on or provide flexibility for all PHAs, owners, and other responsible entities, irrespective of whether they are small entities. For example, the proposed rule leverages Small Area Fair Market Rents to provide PHAs with greater autonomy in setting exception payment standard amounts. It proposes to 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 proposes to eliminate extraneous requirements specific to the project-

basing of VASH and FUP vouchers, as long as project-basing is done consistent with PBV program rules. It proposes to provide PHAs with greater flexibility in the establishment of utility allowance schedules. It also proposes to 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.

### **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.

### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers applicable for the programs that would be affected by this rule are: 14.871, 14.880, and 14.896.

**List of Subjects**

**24 CFR Part 888**

Grant programs-housing and community development, rent subsidies

**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

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 888, 982, 983, and 985 as follows:

**PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS**

1. The authority for part 888 continues to read as follows:

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

2. In § 888.113, revise the second sentence in paragraph (c)(3) to read as follows:

**§ 888.113 Fair market rents for existing housing: Methodology.**

\* \* \* \* \*

(c) \* \* \*



(3) \* \* \* A PHA administering an HCV program in a metropolitan area not subject to the application of Small Area FMRs may use Small Area FMRs after requesting and receiving approval from its local HUD field office.

\* \* \* \* \*

## **PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE**

### **VOUCHER PROGRAM**

**3.** The authority for part 982 continues to read as follows:

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

**4.** In § 982.4:

a. Revise paragraph (a); and

b. In paragraph (b):

i. Add in alphabetical order definitions for “abatement” and “authorized voucher units”;

ii. Revise the definition of “Fair market rent (FMR)”; and

iii. Add 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 terms “adjusted income,” “annual income,” “extremely low income family,” “tenant rent,” “total tenant payment,” “utility allowance,” “utility reimbursement,” and “welfare assistance” are defined in part 5, subpart F of this title. The definitions of “tenant rent” and “utility reimbursement” in part 5, subpart F of this title do not apply to the HCV program under this part.

(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 the annual contributions contract.

\* \* \* \* \*

*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.

\* \* \* \* \*

*Independent entity.* The entity responsible for performing the functions described at § 982.352(b)(1)(iv)(A) (and at § 982.628(d)(3) under the homeownership option) for PHA-owned units. Such entity may be the unit of general local government or a HUD-approved entity. If the PHA itself is the unit of general local government or an agency of such government, then

the next level of general local government (or an agency of such government) may perform such functions without HUD approval. If there is no next level of general local government, then the independent entity must be approved by HUD. HUD-approved independent entities cannot be connected to the PHA legally, financially (except regarding compensation for services performed for PHA-owned units), or in any other manner that could cause the PHA to improperly influence the independent 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) that a family submits 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)*. Small Area FMRs are FMRs established at the U.S. Postal Service ZIP code level. SAFMRs are calculated in accordance with 24 CFR 888.113(a) and (b) for areas meeting the definition in 24 CFR 888.113(d)(2).

\* \* \* \* \*

*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 the Housing Quality Standards.

\* \* \* \* \*

*Withholding*. Stopping HAP payments to an owner while holding them for potential retroactive disbursement.

5. In § 982.54, revise the section heading, amend paragraph (b) by removing “PHA plan” and adding in its place “PHA Plan”, and revise paragraph (d).

The revisions reads as follows:

## **§ 982.54 Administrative Plan.**

\* \* \* \* \*

(d) The PHA Administrative Plan must cover, at a minimum, the PHA's policies on the following subjects (see § 983.10 for a list of subjects specific to the PBV program that must be included in the Administrative Plan of a PHA that operates a PBV program):

(1) Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list;

(2) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions of the voucher term. If the PHA decides to allow extensions of the voucher term, the PHA Administrative Plan must describe how the PHA determines whether to grant extensions and how the PHA determines the length of any extension.

(3) Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families;

(4) Occupancy policies, including:

(i) Definition of what group of persons may qualify as a "family";

(ii) Definition of when a family is considered to be "continuously assisted";

(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;

(iv) Policies concerning residency by a foster child or live-in aide, including defining when PHA consent for occupancy by a foster child or live-in aide may be given or denied;

(5) Encouraging participation by owners of suitable units located outside areas of low-income or minority concentration;

(6) Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit;

(7) Providing information about a family to prospective owners;

(8) Disapproval of owners;

(9) Subsidy standards;

(10) Family absence from the dwelling unit;

(11) How to determine who remains in the program if a family breaks up;

(12) Informal review procedures for applicants;

(13) Informal hearing procedures for participants;

(14) 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(d)(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).

(15) The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract);

(16) Special policies concerning special housing types in the program (e.g., use of shared housing);

(17) Policies concerning payment by a family to the PHA of amounts the family owes the PHA;

(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;

(19) Restrictions, if any, on the number of moves by a participant family (see § 982.354(c));

(20) Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve;

(21) Procedural guidelines and performance standards for conducting required housing quality standard inspections, including:

(i) The specific life-threatening conditions that will be identified through the PHA's inspections. This list must include the HUD required conditions found in § 982.401(o), as well as any amendments to the definition by HUD, and any life-threatening deficiency adopted by the PHA prior to January 18, 2017.

(ii) For PHAs that adopt the non-life-threatening provision:

(A) The PHA policy on whether the provision will apply to all initial inspections or a portion of initial inspections.

(B) If the provision will be applied to only some inspections, how the units will be selected.

(C) The PHA policy on using withheld HAP funds to repay an owner once the unit is in compliance with Housing Quality Standards.

(iii) For PHAs that adopt the alternative inspection provision:

(A) The PHA policy on how it will apply the provision to initial and biennial 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) 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 policy on charging a reinspection fee to owners.

(22) PHA screening of applicants for family behavior or suitability for tenancy;

(23) Whether the PHA will permit a family to submit more than one Request for Tenancy Approval at a time (§ 982.302(b)); and

(24) 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).

\* \* \* \* \*

6. In § 982.301, revise the paragraph (a) subject heading and paragraphs (a)(2) and (4) and (b) and add paragraph (c) to read as follows:

**§ 982.301 Information when family is selected.**



(a) *Oral briefing.* \* \* \*

(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 that may affect the family's assistance.

\* \* \* \* \*

(4) In briefing a family that includes any persons with disabilities, the PHA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E.

\* \* \* \* \*

(b) *Information packet.* When a family is selected to participate in the program, the PHA must give the family a packet that includes information on the following subjects:

(1) The term of the voucher, voucher suspensions, and PHA policy on any extensions of the term. If the PHA allows extensions, the packet must explain how the family can request an extension.

(2) How the PHA determines the amount of the housing assistance payment for a family, including:

(i) How the PHA determines the payment standard for a family; and

(ii) How the PHA determines the total tenant payment for a family.

(3) How the PHA determines the maximum rent for an assisted unit.

(4) Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process that may affect the family's assistance.

(5) The HUD-required "tenancy addendum" that must be included in the lease.

(6) The form that the family uses to request PHA approval of the assisted tenancy, and an explanation of how to request such approval.

(7) A statement of the PHA policy on providing information about a family to prospective owners.

(8) PHA subsidy standards, including when the PHA will consider granting exceptions to the standards., including when required as a reasonable accommodation for persons with disabilities under Section 504, the Fair Housing Act, or the ADA.

(9) Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides.

(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 under Section 504, the Fair Housing Act, and the Americans with Disabilities Act.

(11) A list of landlords known to the PHA who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the PHA that may assist the family in locating a unit. PHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.

(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) that the family may request a current listing of accessible units known to the PHA that may be available and, if necessary, other assistance in locating an available accessible dwelling unit.

(13) Family obligations under the program, including any obligations of a welfare-to-work family.

(14) The advantages of areas that do not have a high concentration of low-income families.

(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.* The PHA shall take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964, Executive Order 13166, and HUD's LEP Guidance.

\* \* \* \* \*

7. In § 982.305, revise paragraphs (a) introductory text, (b)(1) introductory text, and (b)(2)(ii), add paragraph (b)(2)(iii), revise paragraphs (c)(3) and (4), and add paragraph (f) to 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) All of the following must be completed before the beginning of the initial term of the lease for a unit:

\* \* \* \* \*

(2) \* \* \*

(ii) The 15-day clock (under paragraph (b)(2)(i)(A) or (B) of this section) is suspended during any period when the unit is not available for inspection.

(iii) If the PHA has implemented, and the unit is covered by, the alternative inspection option for initial inspections under § 982.406(f), the PHA is not required to inspect the unit, determine whether the unit satisfies the HQS, and notify the family and owner of the determination within the time period described in paragraphs (b)(1)(i) and (ii) of this section. Instead, the PHA must have determined that the unit is covered by the alternative inspection and notified the family and the owner that the alternative inspection option is available in accordance with the time periods described in paragraphs (b)(1)(i) and (ii). See § 982.406(e) for the PHA initial inspection requirements under the alternative inspection option.

\* \* \* \* \*

(c) \* \* \*

(3) If the HAP contract is executed within 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

(4) Any HAP contract executed after the 60-day period is void, and the PHA may not pay any housing assistance payment to the owner. If there are extenuating circumstances that prevent or prevented the PHA from meeting the 60-day deadline, then the PHA may submit to HUD a

request for an extension. The request must include an explanation of the extenuating circumstances and any supporting documentation.

\* \* \* \* \*

(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(i), the unit must be inspected by the PHA and must have no life-threatening deficiencies as defined under § 982.401(o) 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.

\* \* \* \* \*

**8.** In § 982.352, revise paragraphs (a) and (b) to read as follows:

**§ 982.352 Eligible housing.**

(a) *Ineligible housing.* The following types of housing may not be assisted by a PHA in the tenant-based programs:

- (1) A public housing or Indian housing unit;
- (2) A unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);
- (3) Nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services;
- (4) College or other school dormitories;
- (5) Units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; or
- (6) A unit occupied by its owner or by a person with any interest in the unit. (For provisions on PHA disapproval of an owner, *see* § 982.306.)

(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 (except that § 982.405(e) is not applicable). 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.

\* \* \* \* \*

9. In § 982.401, revise paragraph (a)(3) and add paragraphs (a)(5) and (o) to read as follows:

**§ 982.401 Housing quality standards (HQS).**

(a) \* \* \*

(3) All program housing must meet the HQS requirements both at commencement of assisted occupancy (§ 982.305(f)), and throughout the assisted tenancy (§982.404).

\* \* \* \* \*

(5) All defects that are not life-threatening conditions defined in paragraph (o) of this section must be remedied within 30 days of the owner's receipt of written notice of the defects or a reasonable longer period that the PHA establishes.

\* \* \* \* \*

(o) *Life-threatening conditions.* (1) Life-threatening conditions must be cured within 24 hours after written notice of the defects has been provided. Failure to do so may result in termination, suspension, or reduction of housing assistance payments and termination of the HAP contract.

(2) Life-threatening conditions are defined as:

(i) Gas (natural or liquid petroleum) leak or fumes. A life-threatening condition under this standard is one of the following:

(A) A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking; or

(B) A strong gas odor detected with potential for explosion or fire, or that results in health risk if inhaled.

(ii) Electrical hazards that could result in shock or fire. A life-threatening condition under this standard is one of the following:

(A) A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed;

(B) A light fixture is hanging by its wires;

(C) A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day to day use of the unit;

(D) A receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed;

(E) A receptacle (outlet) or switch has a missing or damaged cover plate and electrical connections or wires are exposed;



(F) An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses;

(G) A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections;

(H) Any nicks, abrasions, or fraying of the insulation that expose conducting wire;

(I) Exposed bare wires or electrical connections;

(J) Any condition that results in openings in electrical panels or electrical control device enclosures;

(K) Water leaking or ponding near any electrical device; or

(L) Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition.

(iii) Inoperable or missing smoke detector. A life-threatening condition under this standard is one of the following:

(A) The smoke detector is missing; or

(B) The smoke detector does not function as it should.

(iv) Interior air quality. A life-threatening condition under this standard is one of the following:

(A) The carbon monoxide detector is missing; or

(B) The carbon monoxide detector does not function as it should.

(v) Gas/oil fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney or venting. A life-threatening condition under this standard is one of the following:

(A) The chimney or venting system on a fuel fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gases;

(B) A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside;

(C) A fuel fired space heater is not properly vented or lacks available combustion air;

(D) A non-vented space heater is present;

(E) Safety devices on a fuel fired space heater are missing or damaged; or

(F) The chimney or venting system on a fuel fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged which may cause improper or dangerous venting of gases.

(vi) Lack of alternative means of exit in case of fire or blocked egress. A life-threatening condition under this standard is one of the following:

(A) Any of the components that affect the function of the fire escape are missing or damaged;

(B) Stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency; or

(C) The building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency.

(vii) Other interior hazards. A life-threatening condition under this standard is a fire extinguisher (where required) that is missing, damaged, discharged, overcharged, or expired.

(viii) Deteriorated paint, as defined by 24 CFR 35.110, in a unit built before 1978 that is to be occupied by a family with a child under 6 years of age. This is a life-threatening condition only for the purpose of a condition that would prevent a family from moving into the unit. All

lead hazard reduction requirements in 24 CFR part 35, including the timeline for lead hazard reduction procedures, still apply.

(ix) Any other condition identified by the administering PHA as life-threatening in the PHA's administrative plan.

(3) Any other condition subsequently identified by HUD as life-threatening. These additional items will be added through a document published in the Federal Register for 30 days of public comment, followed by a final notice announcing any additional life-threatening conditions and the date on which the additions take effect.

**10.** In § 982.404, revise paragraphs (a), (b)(1) introductory text, and (b)(2) and add paragraphs (c) through (f) 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 fails to comply with HQS, the agency or inspector notifies the owner in writing of the failure to comply, and the defects are not remedied within the appropriate timeframe.

(2) If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must withhold or must abate housing assistance payments and terminate HAP contracts in accordance with this section.

(3) If a defect is life-threatening, the owner must correct the defect within no more than 24 hours after notification. For other defects, the owner must correct the defect within no more than 30 calendar days after notification (or any PHA-approved extension).

(4) In the case of an HQS deficiency that is caused by any member, or guest of the assisted family, the PHA may waive the owner's responsibility to remedy the violation. If the PHA waives the owner's responsibility, then the family must make the repairs in accordance with paragraph (b)(2) of this section. However, the PHA may terminate assistance to a family because of an HQS breach caused by any member or guest of the assisted family.

(b) \* \* \*

(1) The family may be held responsible for a breach of the HQS that is caused by any of the following:

\* \* \* \* \*

(2) If an HQS breach caused by the family is life threatening, the family must correct the defect within no more than 24 hours after receiving notification. For other family-caused defects, the family must correct the defect within 30 calendar days after notification (or any PHA-approved extension).

\* \* \* \* \*

(c) *Determination of noncompliance with Housing Quality Standards.* The unit is in noncompliance with Housing Quality Standards if:

(1) The PHA or authorized inspector determines the unit fails to comply based upon an inspection;

(2) The PHA notified the owner in writing of the unit failure; and

(3) The unit failures are not corrected in accordance with the timeframes established in § 982.401(a)(5) and (o).

(d) *PHA remedies for HQS deficiencies identified during regular or interim inspections.*

This subsection covers PHA actions when HQS deficiencies are identified as a result of a regular

inspection (HQS inspection conducted for a unit under HAP contract at least biennially) or interim inspection (when the PHA inspects the unit at other times as needed, such as when a family or government official notifies the PHA of a deficiency). For PHA HQS enforcement actions for HQS deficiencies under the initial HQS inspection NLT or alternative inspection options, *see* §§ 982.405(i) and 982.406(e), respectively.

(1) A PHA may withhold assistance payments for units that do not meet HQS once the PHA has notified the owner in writing of the deficiencies. If the unit is brought into compliance during the applicable cure period (24 hours for life-threatening deficiencies and 30 days (or other reasonable period established by the PHA) for non-life-threatening deficiencies, the PHA must:

- (i) Resume assistance payments; and
- (ii) Provide assistance payments to cover the time period for which the assistance payments were withheld.

(2)(i) The PHA must abate the HAP if the owner fails to make the repairs within the applicable cure period (24 hours for life-threatening deficiencies and 30 days (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 and provide the family with any other forms necessary to move to another unit with continued HCV assistance.

(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.

(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 preference for the first appropriately sized public housing unit that 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 or reasonable moving costs as determined by the PHA based on their locality. 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 renewed after [EFFECTIVE DATE OF FINAL RULE]. 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 [DATE ONE DAY BEFORE EFFECTIVE DATE OF FINAL RULE] remains applicable.

\* \* \* \* \*

11. Revise § 982.405 to read as follows:

**§ 982.405 PHA initial and periodic unit inspection.**

(a) *Initial unit inspections.* The PHA must conduct an initial unit inspection, and then inspect the unit at least biennially and at other times as needed during assisted occupancy, to determine if the unit meets HQS. (*See* § 982.305(b)(2) concerning timing of initial inspection by the PHA and § 982.406 concerning the use of alternative inspections in meeting the initial and biennial inspection requirements.)

(b) *Supervisory quality control inspections.* The PHA must conduct supervisory quality control HQS inspections.

(c) *Scheduling inspections.* In scheduling inspections, the PHA must consider complaints and any other information brought to the attention of the PHA.

(d) *PHA notification of owner.* The PHA must notify the owner of defects shown by the inspection.

(e) *Charge to family for inspection.* The PHA may not charge the family for an initial inspection or reinspection of the unit.

(f) *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 (f) 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.

(g) *Other inspection.* When a participant family or government official notifies the PHA of a potential life-threatening deficiency as defined in § 982.401(o), 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. If the reported condition 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 notification from the PHA or within any PHA-approved extension. In the event of extraordinary circumstances, such as if a unit is within a presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

(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. 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 defect has been corrected.

(i) *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 conditions as defined in § 982.401(o). 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).

**12.** In § 982.406, revise paragraphs (a), (b), (c)(1), and (c)(2) introductory text, redesignate existing paragraph (e) as paragraph (g), and add new paragraph (e) and paragraph (f).

The revisions and additions read as follows:

**§ 982.406 Use of alternative inspections.**

(a) *In general.* (1) A PHA may comply with the initial inspection requirements in 982.405(a) 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 biennial inspections or may limit the use of alternative inspections to either initial or biennial inspections. The PHA may limit the use of alternative inspections to certain units, as provided in the PHA's Administrative Plan.

(2) If an alternative inspection method employs sampling, then a PHA may rely on such alternative inspection method to comply with the requirements in § 982.405(a) only if HCV units are included in the population of units forming the basis of the sample.

(3) Units in properties that are mixed-finance properties assisted with project-based vouchers may be inspected at least triennially pursuant to 24 CFR 983.103(h).

(b) *Administrative Plan.* A PHA relying on an alternative inspection to fulfill the requirements in § 982.405(a) must identify in the PHA Administrative Plan all the optional policies identified in § 982.54(d)(21).

(c) \* \* \*

(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.

\* \* \* \* \*

(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(i) 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 alternative inspection option is available for the unit selected by the family. The PHA must provide the family with the PHA list of HQS deficiencies that are considered life-threatening under § 982.401(o) 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 § 982.404(g) 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 defect is life threatening, the owner must correct the defect within 24 hours of notification from the PHA. For other defects, the owner must correct the defect 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 no 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 under § 982.401(o) 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 § 982.404(g) 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 defects, the owner must correct the defect 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.

\* \* \* \* \*

13. In § 982.451, add subject headings to paragraphs (a) and (b), revise paragraphs (b)(4)(i) introductory text and (b)(5)(iii), and add paragraph (c) to 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:

\* \* \* \* \*

(5) \* \* \*

(iii) The PHA may use only the following sources to pay a late payment penalty from program receipts under the consolidated ACC: administrative fee income for the program or the administrative fee reserve for the program. The PHA may not use other program receipts for this purpose.

(c) *PHA-owned units.* If the PHA-owned unit is 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 two following options for the PHA-owned unit, because the PHA cannot execute a HAP contract with itself.

(1) *HAP contract execution.* (i) Prior to execution of a HAP contract, the PHA must establish a separate legal entity to serve as the owner. The separate legal entity must have the legal capacity to lease units and must be one of the following:

- (A) A non-profit affiliate or instrumentality of the PHA;
- (B) A limited liability corporation;
- (C) A limited partnership;
- (D) A corporation; or
- (E) Any other legally acceptable entity recognized under State law.

(ii) In cases where the independent entity, as defined in § 982.4, is required to notify the PHA of a determination, the independent entity may notify the PHA or the separate legal entity, or both.

(2) *PHA certification option.* (i) Instead of executing the HAP contract for the PHA-owned unit, the PHA signs the HUD-prescribed certification covering the PHA-owned unit. By signing the HUD 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.

(ii) The PHA executed certification serves as the equivalent of the HAP contract for the PHA-owned unit.

(iii) The PHA must obtain the services of an independent entity to perform the required PHA functions in accordance with § 982.352(b)(1)(v) before signing the certification.

(iv) 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).



14. 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 Small Area FMR areas (U.S. Postal Service ZIP code areas within designated metropolitan 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 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 and establish 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 a dollar amount that is equivalent to any amount in the range from 90 percent up to and including 110 percent of the published FMR for a unit size.

(1) The PHA may establish a basic payment standard amount without HUD approval.

(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, in a designated part of the FMR area (called an “exception 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 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.

(3) In all other cases, the PHA must request approval from HUD to establish an exception payment standard amount for an exception area 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 in order for families to access rental units in the exception area. 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.

(4) 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, an exception payment standard amount 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.* (1) Without HUD approval, the PHA may establish a payment standard amount that is not lower than 90 percent of the Small Area FMR for the relevant ZIP code area in its jurisdiction that is currently under a metropolitan FMR.

(2) In cases other than the circumstance described in paragraph (e)(1) of this section, a PHA that wishes to establish a payment standard amount that is below the basic range must obtain HUD approval. In determining whether to approve the PHA request, HUD will consider such factors as whether approval of the request is necessary to prevent the termination of program participants or increase the number of families the PHA may assist.

(f) *Success rate payment standard amounts.* In order to increase the number of voucher holders who become participants, HUD may approve requests from PHAs whose FMRs are computed at the 40th percentile rent to establish higher, success rate payment standard amounts. A success rate payment standard amount is defined as any amount from 90 percent up to and including 110 percent of the 50th percentile rent, calculated in accordance with the methodology described in 24 CFR 888.113.

(1) A PHA may obtain HUD Field Office approval of success rate payment standard amounts provided the PHA demonstrates to HUD that it meets the following criteria:

(i) Fewer than 75 percent of the families to whom the PHA issued rental vouchers during the most recent 6-month period for which there is success rate data available have become participants in the voucher program;

(ii) The PHA has established payment standard amounts for all unit sizes in the entire PHA jurisdiction within the FMR area at 110 percent of the published FMR for at least the 6-month period referenced in paragraph (f)(1)(i) of this section and up to the time the request is made to HUD; and

(iii) The PHA has a policy of granting automatic extensions of voucher terms to at least 90 days to provide a family who has made sustained efforts to locate suitable housing with additional search time.

(2) In determining whether to approve the PHA request to establish success rate payment standard amounts, HUD will consider whether the PHA has a SEMAP overall performance rating of “troubled.” If a PHA does not yet have a SEMAP rating, HUD will consider the PHA’s SEMAP certification.

(3) HUD approval of success rate payment standard amounts shall be for all unit sizes in the FMR area. A PHA may opt to establish a success rate payment standard amount for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(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 § 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 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.

15. In § 982.505, revise paragraphs (c)(3) through (5) and remove paragraph (d).

The revisions read as follows:

**§ 982.505 How to calculate housing assistance payment.**

\* \* \* \* \*

(c) \* \* \*

(3) Decrease in the payment standard amount while the family remains assisted in the same unit. 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 (i.e., online).

(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. The PHA may establish different policies for different designated areas within its jurisdiction (e.g., for different

ZIP code areas), but the PHA administrative policy on decreases to payment standard amounts must apply to all families under HAP contract at the time of the effective date of a decrease in the payment standard amount within a designated area.

(4) 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 reexamination; or

(iii) One year following the effective date of the increase in the payment standard amount.

(5) Irrespective of any increase or decrease in the payment standard amount, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard amount for the family beginning at the family's first regular reexamination following the change in family unit size.

**16.** In § 982.517, revise paragraphs (a)(2), (b), and (e) to read as follows:

**§ 982.517 Utility allowance schedule.**

(a) \* \* \*

(2) At HUD's request, the PHA must provide the utility allowance schedule and any information or procedures used in preparation of the schedule.



(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 the Housing Quality Standards.

(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); 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, satellite television, or wireless internet.

(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 LEED or Energy Star or other Energy Savings Design standards included in HUD's Utility Schedule Model. HUD may subsequently identify additional Energy Savings Design standards, 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 Energy Savings Design standards and the date on which the modifications take effect. The energy-efficient utility allowance 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 less 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) 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 family 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 family member with a disability.

\* \* \* \* \*

17. 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 Housing Quality Standards 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.

18. In § 982.625, revise paragraphs (a), (b), (f), and add a paragraph (g) subject heading to read as follows:

**§ 982.625 Homeownership option: General.**

(a) *Applicability.* The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family.

(b) *Family status.* A family assisted under the homeownership option may be a newly admitted or existing participant in the program.

\* \* \* \* \*

(f) *Live-in aide.* The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and useable by persons with disabilities in accordance with parts 8 and 100 of this title. (See § 982.316 concerning occupancy by a live-in aide.)

(g) *PHA capacity.* \* \* \*

\* \* \* \* \*

19. In § 982.628, revise paragraphs (d) introductory text and (d)(3) introductory text to 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 all of 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)(iv)(B), to perform the following PHA functions:

\* \* \* \* \*

20. In § 982.630, revise paragraph (a), add a paragraph (b) subject heading, and revise paragraphs (c) through (e) to read as follows:

**§ 982.630 Homeownership option: Homeownership counseling.**

(a) *Pre-assistance counseling.* Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA (pre-assistance counseling).

(b) *Counseling topics.* \* \* \*

\* \* \* \* \*

(c) *Local circumstances.* The PHA may adapt the subjects covered in pre-assistance counseling (as listed in paragraph (b) of this section) to local circumstances and the needs of individual families.

(d) *Additional counseling.* The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing 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.

21. In § 982.635, revise paragraphs (b)(3), (c)(2)(vii), and (c)(3)(vii) to read 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.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vii) Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership

option is readily accessible to and usable by such person, in accordance with parts 8 and 100 of this title; and

\* \* \* \* \*

(3) \* \* \*

(vii) Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person, in accordance with 24 CFR parts 8 and 100.

\* \* \* \* \*

22. In § 982.641, revise paragraph (f)(3) to read as follows:

**§ 982.641 Homeownership option: Applicability of other requirements.**

\* \* \* \* \*

(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**

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



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

**24.** In part 983, revise all references to “structure” to read “project”.

**25.** In § 983.2, revise paragraphs (c)(1), (c)(2)(iii), and (c)(6)(iii) to read as follows:

**§ 983.2 When the tenant-based voucher rule (24 CFR part 982) applies.**

\* \* \* \* \*

(c) \* \* \*

(1) In subpart E of part 982: §§ 982.201(e), 982.202(b)(2), and 982.204(d);;

(2) \* \* \*

(iii) Section 982.316 (live-in aide) applies to the PBV program;

\* \* \* \* \*

(6) \* \* \*

(iii) Section 982.517 (utility allowance schedule), except that § 982.517(d) does not apply.

\* \* \* \* \*

**26.** Revise § 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 included in this section. In limited cases, where there is a slight PBV distinction to the part 982 term, an annotation is made in this section.

(b) *Definitions.*

*1937 Act.* The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

*Abatement.* See 24 CFR 982.4

*Activities of daily living.* Eating, bathing, grooming, dressing, and home management activities.

*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 ZIP code area where the rental vacancy rate is less than 4 percent; or

(ii) A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan area 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.

*Comparable rental assistance.* A subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than 40 percent of the family's adjusted monthly gross income.

*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 housing.* See 24 CFR 982.4.

*Cooperative member.* See 24 CFR 982.4.

*Covered housing provider.* For Project-Based Voucher (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.* 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 development activity. Development activity is activity that entails either:

(i) New construction or rehabilitation work done after the proposal selection date in order for the PHA and owner to execute a PBV HAP contract for newly constructed or rehabilitated housing, or

(ii) One of the following activities undertaken during the term of the PBV HAP contract:

(A) Remodeling that alters the nature or type of housing units in a project,

(B) Reconstruction, or

(C) A substantial improvement in the quality or kind of equipment and materials.

*Excepted units.* Units in a project not counted against the project cap. See § 983.54(c).

*Existing housing.* A housing project in which all the proposed PBV units either fully comply or substantially comply with the HQS on the proposal selection date. (The units must comply with the initial pre-HAP inspection requirements in accordance with § 983.103(b) and (c) before execution of the HAP contract.) A unit substantially complies with the HQS if it has

HQS deficiencies that require only minor repairs to correct (repairs that are minor in nature and could reasonably be expected to be completed within 48 hours of notification of the deficiency.)

To qualify as existing housing, the project is ready to be placed under HAP contract with minimal delay - after the unit inspections are complete, all proposed PBV units not meeting HQS can be brought into compliance to allow PBV HAP contract execution within 48 hours.

*Family.* See 24 CFR 982.4.

*Family self-sufficiency program.* See 24 CFR 982.4.

*Group home.* See 24 CFR 982.4.

*HAP contract.* See 24 CFR 982.4.

*Household.* The family and any PHA-approved live-in aide.

*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).* See 24 CFR 982.4.

Independent entity. See 24 CFR 982.4, except that under the PBV program, the independent entity functions are described in § 983.57.

*Initial rent to owner.* See 24 CFR 982.4.

*In-place family.* An eligible family residing in a proposed contract unit on the proposal selection date.

*Jurisdiction.* See 24 CFR 982.4.

*Lease.* See 24 CFR 982.4.

*Multifamily building.* A building with five or more dwelling units (assisted or unassisted).

*Newly constructed housing.* Housing units that do not exist on the proposal 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-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.

*Project.* A project is 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.

*Project-based certificate (PBC) program.* The program in which project-based assistance is attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001 (*see* § 983.11).

*Proposal selection date.* *See* § 983.51(e)(2).

*Public housing agency (PHA).* *See* 24 CFR 982.4.

*Reasonable rent.* *See* 24 CFR 982.4.

*Rehabilitated housing.* Housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are developed for use under the PBV program.

*Request for Release of Funds and Certification (for purposes of environmental review).* Under 24 CFR 58.1(b)(6)(iii) and § 983.56, HUD approves the local PHA’s Request for Release of Funds and Certification (form HUD-7015.15) by issuing a Letter to Proceed or form HUD-7015.16, authorizing the PHA to execute an “agreement to enter into housing assistance payment contract” (Agreement) or enter directly into a HAP contract with an owner of units selected under the PBV program, or execute a PHA certification under § 983.204(d)(2).

*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.

*Tenant.* See 24 CFR 982.4.

*Tenant-paid utilities.* See 24 CFR 982.4.

*Tenant-selection plan.* A written document that describes the owner's policies and procedures for the selection of tenants for occupancy of PBV units as described in §§ 983.251(c)(7) and 983.253(a).

*Waiting list admission.* An admission from the 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.

27. In § 983.4, revise “labor standards” to read as follows:

**§ 983.4 Cross-reference to other Federal requirements.**

\* \* \* \* \*

*Labor standards.* Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), 29 CFR part 5, and other federal laws and regulations pertaining to labor standards applicable to an Agreement covering nine or more assisted units.

\* \* \* \* \*

28. Revise § 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 an annual contributions contract (ACC) with HUD. 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 housing may be developed pursuant to an Agreement (§ 983.155) 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, the housing may be developed without such an Agreement (§ 983.155(e)).

(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 pool of 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. The PHA must also state in its Administrative Plan that it will engage in project-basing and must amend its Administrative Plan to address the subjects listed in § 983.10, as applicable.

**29.** Revise § 983.6 to read as follows:

**§ 983.6 Maximum amount of PBV assistance (percentage limitation).**

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, a PHA may commit project-based assistance to no more than 20 percent of its authorized voucher units at the time of commitment.

(1) A PHA is not required to reduce the number of units to which it has committed PBV assistance under an AHAP or HAP 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 January 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 January 18, 2017, as applicable), unless such units meet the conditions described in paragraph (d) of this section.

(b) *Units subject to percentage limitation.* All PBC and project-based voucher units for which the PHA has issued a notice of proposal selection or which are under an Agreement or HAP contract for PBC or project-based voucher assistance count against the 20 percent maximum.

(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, provided the additional units meet both of the conditions in paragraphs (d)(1) and (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

(2) 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, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(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.

(iv) The units are located in a census tract with a poverty rate of 20 percent or less, as determined by HUD.

(v) The units are located in an area where vouchers are difficult to use as defined in § 983.3.

(e) *Units previously subject to federally required rent restrictions or that received long-term rental assistance from HUD.* Units covered by a PBV HAP contract will not count toward the program cap if the units meet the requirements of § 983.59.

**30.** Revise § 983.10 to read as follows:

**§ 983.10 PBV provisions in the Administrative Plan.**

(a) In addition to complying with the requirements of § 982.54, a PHA that has implemented or plans to implement a PBV program must state the PHA policy on all PBV-related matters over which the PHA has policymaking discretion.

(b) With respect to the PHA's PBV program, the PHA Administrative Plan must cover, at a minimum, the following PHA policies:

(1) Regarding the selection of PBV proposals:

(i) A description of the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals (§ 983.51(a));

(ii) Whether the PHA will select, without competition, a proposal for housing assisted under another program that required competitive selection of proposals (§ 983.51(b)(2));

(iii) If the PHA will project-base assistance as part of an initiative to improve, develop, or replace a public housing property or site without following a competitive process, its scope of work for the project or site, and how many units of PBV it plans to add (§ 983.51(c));

(2) A description of the types of services that will be offered to families for a project to qualify for the exception from the project cap and the extent to which such voluntary services will be available (e.g., length of time services will be provided to a family, frequency of services, and depth of services) (§ 983.54(c)(1)(ii));

(3) Regarding site selection standards:

(i) The PHA's standard for deconcentrating poverty and expanding housing and economic opportunities, which must be consistent with the PHA Plan under 24 CFR part 903 (§ 983.55(b)(1));

(ii) The PHA's site selection policy, which must explain how the PHA's site selection procedures promote the PBV goals (§ 983.55(c)(1));

(4) PHA inspection policies, including:

(i) How frequently a PHA will conduct inspections during the term of a HAP contract in order to ensure that the premises are maintained in accordance with HUD's Housing Quality Standards (§ 983.103(d) and (g));

(ii) If the PHA has adopted either the non-life threatening deficiencies option or the alternative inspection option, or both, in accordance with § 982.405(i) and/or § 982.305(f), for initial inspections of existing housing, the PHA policies that will apply to such inspections;

(iii) If the PHA will attach PBV assistance to existing housing, the amount of time that may elapse between the initial inspection of a unit and execution of a HAP contract for that unit;

(5) Whether and under what circumstances the PHA will enter into a PBV HAP contract for new construction or rehabilitation without first entering into an Agreement (§ 983.204(c));

(6) A description of the circumstances under which a PHA will consider amending PBV HAP contracts to substitute or add contract units, and how those circumstances support the goals of the PBV program (§ 983.207(a) and (b));

(7) A description of the PHA's waiting list policies for admission to PBV units.

Specifically:

(i) Whether the PHA will establish a separate waiting list for admission to PBV units (§ 983.251(c)(2)(i));

(ii) Whether the PHA will establish separate waiting lists for admission to individual projects or buildings (or for sets of such units), including the names of the project(s) (§ 983.251(c)(2)(iii));

(iii) Any criteria or preferences that the PHA has decided to establish for admission to any PBV units, including the name of the project(s) and the specific criteria or preferences that are to be used by project (§ 983.251(c)(3));

(iv) Whether the PHA will allow for owner-maintained, site-based waiting lists (§ 983.251(c)(7)), including 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 tenant selection plan (including any preferences). The owner's tenant-selection plan must be incorporated in the PHA's Administrative Plan;

(v) Whether a family's position on a central PBV waiting list will be affected by the family's rejection of the PBV offer, without good cause, or the owner's rejection of the family (§ 983.251(e)(2));

(8) Regarding tenant screening:

(i) Whether the PHA will screen applicants for family behavior or suitability for tenancy (§ 983.255(a)(1));

(ii) whether the PHA will offer information to an owner about a family that wishes to lease a dwelling unit from the owner, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members (§ 983.255(c)(2));

(9) 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)(2));

(10) Whether the PHA will allow a family that initially qualified for occupancy of a unit excepted based on elderly family status to continue to reside in the unit where, through circumstances beyond the control of the family, the elderly family member no longer resides in the unit (§ 983.262(d));

(11) Whether the PHA will establish site-specific utility allowances at any of its PBV-assisted properties (§ 983.301);

(12) For an owner that wishes to request a rent increase, the length of the required notice period and the form in which such request must be submitted (§ 983.302(b)(2));

(13) Whether the PHA will employ a PBV HAP contract that provides for vacancy payments to an owner, for what duration of time such payments will be made, and the form and manner in which requests for such vacancy payments must be made (§ 983.352(b)(1) and (4));

(14) Whether utility reimbursements will be paid to the family or to the utility supplier (§ 983.353(d)(2));

(15) Which option the PHA will select if a unit loses its excepted status (§ 983.262(f));  
and

(16) If the PHA is employing SAFMRs in the operation of its Housing Choice Voucher program, whether it will apply SAFMRs to its PBV program per 24 CFR 888.113(h);

**31.** Add § 983.11 to subpart A to read as follows:

**§ 983.11 Project-based certificate (PBC) program.**



(a) *What is it?* “PBC program” means project-based assistance attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001, and in accordance with:

(1) The regulations for the PBC program at 24 CFR part 983, codified as of May 1, 2001, and contained in 24 CFR part 983 revised as of April 1, 2002; and

(2) Section 8(d)(2) of the 1937 Act, as in effect before October 21, 1998 (the date of enactment of Title V of Public Law 105-276, the Quality Housing and Work Responsibility Act of 1998, codified at 42 U.S.C. 1437 *et seq.*).

(b) *What rules apply?* Units under the PBC program are subject to the provisions of 24 CFR part 983, codified as of May 1, 2001, with the following exceptions:

(1) *PBC renewals*—(i) *General*. Consistent with the PBC HAP contract, at the sole option of the PHA, HAP contracts may be renewed for terms for an aggregate total (including the initial and any renewal terms) of 15 years, subject to the availability of appropriated funds.

(ii) *Renewal of PBC as PBV*. At the sole discretion of the PHA, upon the request of an owner, PHAs may renew a PBC HAP contract as a PBV HAP contract. All PBV regulations (including 24 CFR part 983, subpart G—Rent to Owner) apply to a PBC HAP contract renewed as a PBV HAP contract with the exception of §§ 983.51, 983.56, and 983.57(b)(1). In addition, the following conditions apply:

(A) The term of the HAP contract for PBC contracts renewed as PBV contracts shall be consistent with § 983.205.

(B) A PHA must make the determination, within one year before expiration of a PBC HAP contract, that renewal of the contract under the PBV program is appropriate to continue providing affordable housing for low-income families.

(C) The renewal of PBC assistance as PBV assistance is effectuated by the execution of a PBV HAP contract addendum as prescribed by HUD and a PBV HAP contract for existing housing.

(2) *Housing quality standards.* The regulations in 24 CFR 982.401 (Housing Quality Standards) (HQS) apply to units assisted under the PBC program.

(i) *Special housing types.* HQS requirements for eligible special housing types, under this program, apply (See 24 CFR 982.605, 982.609, and 982.614).

(ii) *Lead-based paint requirements.* (A) The lead-based paint requirements at 24 CFR 982.401(j) do not apply to the PBC program.

(B) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(iii) *HQS enforcement.* The regulations in 24 CFR parts 982 and 983 do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(c) *Statutory notice requirements.* In addition to provisions of 24 CFR part 983 codified as of May 1, 2001, § 983.206 applies to the PBC program.

**32** Add § 983.12 to subpart A to read as follows:

**§ 983.12 Prohibition of excess public assistance.**

(a) The PHA may provide PBV assistance for newly constructed and rehabilitation housing only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements.

(b) The subsidy layering requirements are not applicable to existing housing.

(c) 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)(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, that is made available with respect to the contract units during the term of the HAP contract. 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) A subsidy layering review is required to determine if the additional related assistance in paragraph (d)(1) of this section 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.

**33.** Revise subpart B to read as follows:

## **Subpart B—Selection of PBV Owner Proposals**

Sec.

983.51 Owner proposal selection procedures.

983.52 Prohibition of assistance for ineligible units.

983.53 Prohibition of assistance for units in subsidized housing.

983.54 Cap on number of PBV units in each project (income-mixing requirement).

983.55 Site selection standards.

983.56 Environmental review.

983.57 PHA-owned units.

983.58 PHA determination prior to selection.

983.59 Units excepted from program cap and project cap.

## **Subpart B—Selection of PBV Owner Proposals**

### **§ 983.51 Owner proposal selection procedures.**

(a) *Procedures for selecting PBV proposals.* The PHA Administrative Plan must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals. Before selecting a PBV proposal, the PHA must determine that the PBV proposal 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).

(b) *Methods of 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.

(2) The PHA may select, without a PBV competition, 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 (e.g., HOME, and units for which competitively awarded Low-Income Housing Tax Credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within 3 years of the PBV proposal selection date. The earlier competitively selected housing assistance proposal must not have involved any consideration that the project would receive PBV assistance.

(c) *Exceptions to competitive selection.* (1) A PHA may attach PBV assistance to an existing, newly constructed, or rehabilitated structure in which the PHA has an ownership interest or over which the PHA has control without regard to a competitive process when the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The PHA must have notified the public of its intent through its PHA Plan. Newly developed or replacement housing need not be on the same site as the original public housing in order for this exception to apply. In addition, the public housing properties or sites may be in the public housing inventory or they may have been removed from the public housing inventory through any available legal removal tool within 5 years of the proposal selection date.

(2) A PHA may select a project formerly assisted under the public housing program in which a PHA has no ownership interest or control over without regard to a competitive process, or a project that is replacing the public housing project, 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 5 years of the proposal selection date;

(ii) The PHA that owned or owns the public housing project does not administer the HCV program; and

(iii) The 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.

(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 selection.* (1) The PHA must examine the proposed site before the proposal selection date to determine whether the site complies with the site selection standards (§ 983.55).

(2) The PHA may enter into a HAP contract for existing housing if:

(i) The project fully or substantially complies with the HQS on the proposal selection date, which the PHA must determine via inspection,

(ii) If applicable, the project meets the environmental review requirements at § 983.153(a), and

(iii) The project meets the initial inspection requirements in accordance with § 983.103(b).

(f) *PHA written notice of proposal selection.* The PHA must give prompt written notice to the party that submitted a selected proposal under either paragraph (b)(1) or (2) of this section 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.

(g) *Proposal 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 date of proposal selection 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 selection process the PHA undertook and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA Administrative Plan. Under no circumstances may PBV assistance be used with a public housing unit. With the exception of properties 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.* The PHA may not attach or pay PBV assistance for units in the following types of housing:

(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 attach 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; and

(6) Transitional Housing.

(b) *Prohibition against assistance for owner-occupied unit.* The PHA may not attach or pay PBV assistance 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 selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. The PHA must not select or enter into an Agreement or 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 prior to AHAP.* Unless a PHA has exercised the discretion at § 983.155(e) to undertake development activity without an Agreement, the PHA may not attach PBV assistance to units on which construction or rehabilitation commenced after proposal submission and prior to execution of an Agreement.

(1) Units for which rehabilitation or new construction began after proposal submission but prior to execution of an Agreement (if applicable) do not subsequently qualify as existing housing.

(2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

**§ 983.53 Prohibition of assistance for units in subsidized housing.**

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- (a) A public housing dwelling unit;
- (b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
- (c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- (d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- (e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (f) 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);
- (g) 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);
- (h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);

(i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);

(j) A Section 101 rent supplement project (12 U.S.C. 1701s);

(k) 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.);

(l) 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).

**§ 983.54 Cap on number of PBV units in each project (income-mixing requirement).**

(a) *Project cap.* Except as provided in paragraph (b) of this section, the number of units in a project that the PHA may place under an Agreement or a HAP contract cannot be more than the greater of 25 percent of the number of dwelling units (assisted or unassisted) 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 or unassisted) in the project if:

(1) The project is located in a census tract with a poverty rate of 20 percent or less, as determined by HUD, or

(2) 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) PBV units are not counted against the project cap in the following cases:

(i) Units exclusively serving elderly families, as such term is defined in 24 CFR 5.403.

(ii) Units exclusively made available to households eligible for supportive services available to the residents of the project assisted with project-based voucher 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 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). A PHA that manages an FSS program may offer FSS as part of its supportive services package but must not rely solely on FSS to meet the exception. A PHA may, however, make the supportive services used in connection to the FSS program available to non-FSS PBV families at the project.

(2) Units covered by a PBV HAP contract will not count toward the project cap if the units meet the requirements of § 983.59.

(3)(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) *Existing HAP contracts.* (1) In general, HAP contracts in effect prior to April 18, 2017, are governed by the terms of those HAP contracts with respect to the requirements that apply to 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 more detail on the 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 document, 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 HQS.* The PHA may not select a 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 should 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 and implementing regulations, 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 meets the HQS site standards at 24 CFR 982.401(l).

(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 new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

**§ 983.56 Environmental review.**

(a)(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) Existing housing is exempt from environmental review only if the project in which the units are located has previously received federal assistance and has undergone a federal environmental review under the applicable federal program. This exemption does not apply if a federal environmental review is required by law or regulation relating to funding other than PBV housing assistance payments.

(b) Under 24 CFR part 58, a unit of general local government, a county or a 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. The PHA must supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform any required environmental review for any site.

(c) For any project that is not exempt from an environmental review, if such a review has not been conducted prior to the proposal selection date, then the PHA’s written notice of proposal selection must state that the selection is subject to completion of a favorable environmental review and that the project site may be rejected based on the results of the environmental review.

(d) When an environmental review is required, a PHA may not enter into an Agreement or HAP contract with an owner, amend a HAP contract to add units pursuant to the authority at § 983.207(b)(3), or execute a PHA certification under § 983.204(d)(2), 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 project to be assisted is exempt under 24 CFR 58.34 or is 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), as defined in § 983.3(b); or

(3) HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental approval of the site.

(e) HUD will not issue a Letter to Proceed or form HUD-7015.16 to the PHA if any of the activities described in paragraph (d) of this section have already occurred.

(f) Any mitigating measures required by HUD pursuant to a HUD review under 24 CFR part 50 must be included in HUD's written environmental approval of the site.

(g) The PHA must supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform any required environmental review for any site.

**§ 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(f).

(b) *Independent entity functions.* The independent entity, as defined in § 983.3, must perform the following functions in connection with PHA-owned units:

(1) The independent entity must determine rent to owner, including the reasonable rent and the OCAF adjustment, in accordance with §§ 983.301 through 983.305.

(2) The term of the HAP contract and any HAP contract renewal for PHA-owned units must comply with the requirements of § 983.205 and must be agreed upon by the PHA and the independent entity.

(3) The independent entity must perform unit inspections in accordance with § 983.103(f).

(4) The PHA must carry out development activity under § 983.152 or rehabilitation of units subject to a HAP contract under § 983.153 in accordance with the applicable requirements and must submit evidence to the independent entity that work has been completed in accordance with such requirements.

(c) *Payment to independent entity.* (1) The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services.

(2) The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

**§ 983.58 PHA determination prior to selection.**

Before a PHA 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 attaches assistance without competition in accordance with § 983.51(c), it must calculate the number of authorized voucher units that it is permitted to project-base and determine the amount of budget authority that it has available for project-basing in accordance with HUD requirements.

**§ 983.59 Units excepted 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 paragraphs (b) and (c) of this section without the units counting against the program cap or project cap described in §§ 983.6 and 983.54, respectively.

(b) *Requirements for exclusion of existing or rehabilitated units.* Such units must, in the 5 years prior to the request for proposals (RFP) or selection without competition or selection based on a prior competition, fall into one of the following categories:

(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) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965).

(vi) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act).

(vii) 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)

(iii) The following HUD programs:

(A) Section 236.

(B) Section 221(d)(3) or (d)(4) Below Market Interest Rate.

(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) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments Act of 1978).

(c) *Other excluded units.* PBV units pursuant to a conversion of public housing assistance under HUD's Rental Assistance Demonstration (RAD) program and HUD-VASH awarded vouchers specifically designated by HUD for project-based assistance are excluded from the PBV program and project caps.

(d) *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 new construction project is acceptable as long as a majority of the replacement units are built back on the site of the original public housing development 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 new construction project when it is ready for occupancy.

(2) Prior to the demolition of the original project, the PBV new construction project must have been identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

*(e) Unit size configuration and number of units for new construction and rehabilitation projects.* The unit size configuration of the PBV new construction or rehabilitation 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 excepted from the program limitation and the project cap. Units that exceed the total number of covered units in the original project are subject to the program limitation and the project cap.

**34.** In § 983.101, revise the second sentence of paragraph (e) to read as follows:

**§ 983.101 Housing quality standards.**

\* \* \* \* \*

(e) \* \* \* However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing.

35. Revise § 983.103 to read as follows:

**§ 983.103 Inspecting units.**

(a) *Inspection of existing units prior to selection.* If the units to be assisted already exist, the PHA must inspect all units before the proposal selection date and must determine if the project meets the definition of 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) *Inspection of new construction and rehabilitation projects.* Following completion of work pursuant to §§ 983.155 and 983.156, the PHA must inspect each proposed PBV unit before execution of the HAP contract. Each proposed PBV unit must fully comply with the Housing Quality Standards prior to HAP execution.

(c) *Initial inspection requirements for existing housing—(1) In general.* 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 the Housing Quality Standards below entering the HAP contract.

(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 unit has no life-threatening conditions as defined in § 982.401(o), if the owner agrees to the NTL 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 § 983.103(c)(4)

(ii) After completing the inspections and determining there are no life-threatening deficiencies, for any unit with non-life threatening deficiencies, the PHA provides 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) with a list of 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 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 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 may

use the withheld housing assistance payments to make payments for the period that payments were withheld.

(iv) 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 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; and

(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 with 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.

(i) After the PHA determines the project meets the definition of existing housing in accordance with paragraph (a) of this section, the PHA execute the HAP contract for the project if the project has been inspected in the previous 24 months where the alternative inspection meets the requirements of § 982.406, as opposed to re-inspecting the project to make such all units fully comply with the Housing Quality Standards 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 inspections 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 that unit) that will occupy the 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 under § 982.401(o) as part of this notification. A family on the waiting list may decline to accept the 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 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 § 983.103(f) or within 30 days of the effective date of the HAP contract, whichever time period ends first.

(iv) The PHA may not make housing assistance payments to the owner until the PHA has inspected all the units under the HAP contract and determined they meet Housing Quality Standards.

(v) 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 assisted units pass the PHA's HQS inspection. If any 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 defect is life threatening, the owner must correct the defect within 24 hours of notification from the PHA. For other defects, the owner must correct the defect 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.

(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.

(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.

(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 with tenant-based assistance. The PHA must state in its Administrative Plan the number of days 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.

(4) *Initial inspection – use of both the NTL and alternative options.* The PHA may adopt both the NLT option and the alternative inspection option for initial inspections of existing housing.

(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 under 24 CFR 982.401(o). 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.

(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 date of project selection. 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 24 CFR 983.103(f) or within 30 days of the 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 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 may 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 until all the HQS deficiencies (life-threatening and non-life threatening) have been corrected. The owner must correct all life-threatening

deficiencies within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any PHA-approved extension). If the owner corrects the all the deficiencies within the required cure period, the PHA makes the housing assistance payments retroactive to the effective date of the HAP contract.

(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 with tenant-based assistance. 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 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) *Biennial 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 (c) of this section are not counted toward meeting this inspection requirement.

(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 the procedures applicable to HCV units in 24 CFR 982.406.

(f) *Other inspections.* (1) When a participant family or government official notifies the PHA of a potential life-threatening deficiency as defined in 24 CFR 982.401(o), the PHA must inspect the housing unit within 24 hours and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of PHA notification. If the reported condition is non-life threatening, within 15 days, the PHA must inspect the unit and provide the owner notification if the deficiency is confirmed. The owner must then make the repairs within 30 days or any PHA-approved extension. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

(2) The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, 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) 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. 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 defect has been corrected.

(i) *Mixed-finance properties.* In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to an alternative inspection, the PHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

**36.** Revise subpart D to read as follows:

**Subpart D—Requirements for Rehabilitated and Newly Constructed Units**

Sec.

983.151 Applicability.

983.152 Nature of development activity.

983.153 Development requirements.

983.154 Development agreement.

983.155 Completion of work.

983.156 PHA acceptance of completed units.

983.157 Development activity on units under a HAP contract.

**Subpart D—Requirements for Rehabilitated and Newly Constructed Units**

**§ 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 project under a HAP contract (new construction or rehabilitation), or
- (2) Adding previously unassisted units in the project to the HAP contract in accordance with § 983.207(b)(3).

(b) *Development requirements.* (1) Development activity undertaken in order to place a new construction or rehabilitation project under a HAP contract must comply with the requirements of §§ 983.153 through 983.156.

(2) Development activity undertaken in order to add previously unassisted units in the project to the HAP contract must comply with the requirements of §§ 983.153(e), (f), and (g); 983.155; and 983 156. Section 983.154, Development agreement, is not applicable if the development activity is undertaken to add previously unassisted units in the project to the HAP contract.

**§ 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 to place a project under a HAP contract (new construction or rehabilitation) at § 983.152(a)(1) 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 commits to provide assistance to a project. Specifically, the PHA may not enter into 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) If a PHA is undertaking development activity to place a project under a HAP contract (new construction or rehabilitation) at § 983.152(a)(1), 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 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. A subsidy layering review is required for newly constructed or rehabilitated housing under a HAP contract that receives additional assistance, as described in § 983.12(d).

(5) Existing housing is exempt from subsidy layering requirements.

(c) *Labor standards.* (1) Labor standards as described in paragraphs (c)(2) and (3) of this section apply to development activity undertaken to place a new construction or rehabilitation

project under a HAP contract if the PHA and owner execute an Agreement in accordance with § 983.154(a). If the PHA decides not to require the Agreement in accordance with § 983.154(e), the labor standards described in paragraphs (c)(2) and (3) of this section do not apply.

(2) In the case of development involving nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing.

(3) 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.

(4) For any project to which labor standards apply, the PHA's written notice of proposal selection must state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

(d) *Equal opportunity*. Development activity at § 983.152 is subject to Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

(e) *Equal employment opportunity*. Development activity at § 983.152 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).

(f) *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 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 at § 983.152. A description of any required work item resulting from these requirements must be included in the Agreement (if applicable), as specified in § 983.155(d)(9).

(g) *Broadband infrastructure.* (1) Any development activity under § 983.152(a) that constitutes substantial rehabilitation as defined by 24 CFR 5.100 of a building with more than 4 rental units and where the date of the notice of proposal selection 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 § 983.55(d)(9).

(h) *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 nonprocurement programs 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.

(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.

### **§ 983.154 Development agreement.**

(a) *Agreement to enter into a HAP contract (Agreement).* Except as specified in paragraph (e) of this section, the PHA and owner must enter into an Agreement that will govern development activity under § 983.152. 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.

(b) *Timing of Agreement.* The Agreement must be signed prior to the commencement of development activity, as described in paragraph (c) of this section, and must be in the form required by HUD (*see* § 982.162(b)).

(c) *Commencement of development activity.* The PHA may not enter into an Agreement if development activity has 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).

(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.

(d) *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:

(1) Site;

(2) Location of contract units on site;

(3) Number of contract units by area (square footage) and number of bedrooms and bathrooms;

(4) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

(5) 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) The Agreement must include a description of any required work item necessary to comply with the accessibility requirements of § 983.153(f).

(7) If the requirement at § 983.153(g) to install broadband infrastructure applies, then the Agreement must include a description of any required work item resulting from this requirement.

(8) Estimated initial rents to owner for the contract units;

(9) Description of the work to be performed under the Agreement.

(i) If the Agreement is for new construction, then the work description must include the working drawings and specifications.



(ii) If the Agreement is for rehabilitation, then the work description must include the rehabilitation work write-up and, where determined necessary by the PHA, specifications and plans.

(e) *PHA discretion.* With respect to development activity under § 983.152, the PHA may decide whether to require the use of an Agreement.

(1) A PHA that will not require the use of an Agreement must state this in its Administrative Plan.

(2) The following conditions apply:

(i) The owner of the project must be able to document its compliance with the 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) Prior to selecting the project, the PHA must confirm that, from the point 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), the owner has complied with the requirements of § 983.153.

(3) Following the date of proposal selection, the PHA and owner may enter into an Agreement but are not required to do so.

### **§ 983.155 Completion of work.**

The owner must submit evidence and certify to the PHA, in the form and manner required by the PHA, that development activity under § 983.152 or development activity

undertaken on units under a HAP contract under § 983.157 has been completed, and that all such work 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 units to determine whether they were completed in accordance with HUD's Housing Quality Standards (*see* § 983.103(b)(1)) and any additional design or quality requirements specified by the PHA.

(b) *Execution or amendment of the HAP contract.* If the PHA determines that the development activity was completed in accordance with the applicable requirements, and the units meet HUD's Housing Quality Standards and any additional design or quality requirements specified by the PHA, then the PHA must submit the HAP contract for execution by the owner and must execute the HAP contract for PBV rehabilitation and new construction projects (§ 983.152(a)(1)) or amend the HAP contract to add the units to the HAP contract (§ 983.152(a)(2)).

**§ 983.157 Development activity on units under a HAP contract.**

(a) *Owner request to undertake development activity on units under a HAP contract.* The owner may undertake development activity on units currently under a HAP contract if approved to do so by the PHA. The owner may not request, and a PHA may not approve, the owner's request within the first five years of the effective date of the HAP contract except in extraordinary circumstances (e.g., the units were damaged by fire, natural disaster, etc.). The owner's request must include a description of the development activity proposed to be

undertaken and the length of time, if any, it is anticipated that the units will not meet HQS. If any of the units will not meet Housing Quality Standards during the period of the development activity, the owner's request must include a description of how the families will be rehoused during the period the units will not meet Housing Quality Standards. Housing assistance payments may not be made during the time the units are not in compliance with Housing Quality Standards requirements during the development activity. The PHA may choose to temporarily remove units from the PBV HAP contract during the time the units will not meet Housing Quality Standards during the development activity.

(b) *Applicable requirements.* The following development requirements under § 983.153 apply to development activity undertaken on units under a HAP contract.

(1) The equal opportunity employment opportunity requirements at § 982.153(e) shall apply, as applicable.

(2) The accessibility standards at § 983.153(f) shall apply, as applicable.

(3) The broadband infrastructure requirements at § 983.153(g) shall apply, as applicable.

(c) *Inapplicable requirements.* (1) Except as provided in paragraph (b) of this section, the development requirements under § 983.153 do not apply to development activity undertaken for units under a HAP contract.

(2) Section § 983.154, Development agreement, does not apply to development activity undertaken for units that are currently under a HAP contract.

(3) Section § 983.156, PHA acceptance of completed units, does not apply to development activity undertaken for units that are currently under a HAP contract.

37. In § 983.203, revise paragraphs (f) through (i) and add paragraph (j) to 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;

(g) The HAP contract term;

(h) The number of units in any project that will exceed the 25 percent per-project project cap (as described in § 983.54), which will be set-aside for occupancy by families who qualify for an exception (as described in § 983.54);

(i) The initial rent to owner (for the first 12 months of the HAP contract term); and

(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).

38. Revise § 983.204 to read as follows:

**§ 983.204 When HAP contract is executed.**

(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). The PHA may not enter into the HAP contract for any contract unit that does not meet the pre-HAP contract HQS requirements.

(b) *Existing housing.* In the case of existing housing, the HAP contract must be executed 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.* In the case of newly constructed or rehabilitated housing, the HAP contract must be executed after the PHA determines that the housing was completed in accordance with the applicable requirements, HUD's Housing Quality Standards, and any additional design or quality requirements specified by the PHA. .

(d) *PHA-owned units.* If the PBV project containing PHA-owned units is 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 two following options because the PHA cannot execute a PBV HAP contract with itself.

(1) *PBV HAP contract execution.* (i) Prior to execution of the PBV HAP contract, the PHA must establish a separate legal entity to serve as the owner. The separate legal entity must have the legal capacity to lease units and must be one of the following:

- (A) A non-profit affiliate or instrumentality of the PHA;
- (B) A limited liability corporation;
- (C) A limited partnership;
- (D) A corporation; or
- (E) Any other legally acceptable entity recognized under State law.

(ii) In cases where the independent entity, as defined in § 982.4, is required to notify the PHA of a determination, the independent entity may notify the PHA or the separate legal entity, or both.

(2) *PHA certification option.* (i) Instead of executing the PBV HAP contract, the PHA signs the HUD-prescribed certification covering the PHA-owned PBV project. By signing the HUD 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 PBV project.

(ii) The PHA executed certification serves as the equivalent of the PBV HAP contract for the PHA-owned PBV project.

(iii) The PHA must obtain the services of an independent entity to perform the required PHA functions in accordance with § 983.57(b) before signing the certification.

(iv) 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).

**39.** 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.* (1) The PHA and owner may agree to extend the term of the HAP contract for up to 20 years beyond the initial term of the contract, provided the PHA determines the extension is appropriate to continue providing affordable housing for low-income families.

(2) The PHA and owner may agree to extend the contract term multiple times during the term of the HAP contract, provided that the extensions cumulatively do not extend more than 20 years beyond the end of the initial contract term.

(3) The PHA and owner may subsequently agree to extend the term of the contract beyond 20 years from the end of the initial term, but only if the following conditions are met:

(i) No earlier than 24 months prior to the expiration of the HAP contract, the PHA determines that the extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities; and

(ii) The term of the new extension may not exceed 20 years.

(4) Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

(c) *PHA-owned units*. In the case of PHA-owned units, the term of the HAP contract and any HAP contract extension must comply with the requirements of this section and must be agreed upon by the PHA and the independent entity (*see* § 983.57(b)(2)).

**40.** 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 or PBC 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 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.* The PBV HAP contract must provide that, unless a termination or expiration without extension occurs as a result of a determination of insufficient funding pursuant to paragraph (c) of this section upon termination or expiration without extension of a PBV HAP contract, each assisted family may elect to use their tenant-based assistance to remain in the same project, subject to the following:

(1) The unit must comply with HUD's Housing Quality Standards;

(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 § 982.508 regarding maximum family share at initial occupancy shall not apply);

(4) The family shall not be considered a new admission to the tenant-based program

(5) The family shall not count toward the PHA's income-targeting requirements at § 982.201(b)(2)(i); and



(6) An owner may not terminate the tenancy of a family that elects to use their tenant-based assistance to remain in the same project, except for in response to serious or repeated lease violations, or for other good cause (*see* § 982.310).

(c) *Termination by PHA.* (1) The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD. For purposes of this section, "sufficient funding" means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract. Consistent with the policies in the PHA's Administrative Plan, the PHA has the option of terminating a PBV HAP contract only if:

(i) The PHA determines that it lacks sufficient funding to continue housing assistance payments for all voucher units under a HAP contract;

(ii) The PHA has taken cost-saving measures specified by HUD; and

(iii) HUD determines that the PHA lacks sufficient funding.

(2) If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination. In the case of contract termination, families shall be provided tenant-based assistance, as described in paragraph (b) of this section.

(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, 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.

41. 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 and subject to all PBV requirements, the HAP contract may be amended 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 to determine whether it complies with HQS and must determine the reasonable rent for such unit.

(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, a HAP contract may be amended to add PBV units in the same project to the contract, without a new proposal selection.

(1) Added units that qualify for an exception to the program cap (as described in § 983.6 and § 983.59) or the project cap (as described in § 983.54 and § 983.59) will not count against 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) 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 the unit. If such repairs or renovation constitutes development activity as defined in § 983.3, then the requirements at § 983.152(b) must be met.

(4) Units may only be added to the HAP contract if the units existed at the time of HAP contract execution.

(c) *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.

**42.** Revise § 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 HUD's Housing Quality Standards, 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 term with additional housing quality requirements specified by the PHA (in addition to, but not in place of, compliance with HUD's Housing Quality Standards). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified by the PHA (§ 983.204(c)).

(b) *Enforcement of Housing Quality Standards.* (1) The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with HUD's Housing Quality Standards. The PHA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with HUD's Housing Quality Standards.

(2) The unit is considered to be in noncompliance with Housing Quality Standards if:

(i) The PHA or authorized inspector determines the unit fails to comply based upon an inspection;

(ii) The PHA notified the owner in writing of the unit failure; and

(iii) The unit failures are not corrected in accordance with the timeframes established in § 982.401(a)(5) and/or § 982.401(o).

(3) In the case of an HQS deficiency that is caused by any member or guest of the assisted family, the PHA may waive the owner's responsibility to remedy the violation. If the PHA waives the owner's responsibility, then the family must make the repairs in accordance with the applicable timeframes. However, the PHA may terminate assistance to a family because of HQS breach caused by the family, which may result in removing the unit from the HAP contract.

(c) *PHA remedies.* This paragraph covers PHA actions when HQS deficiencies are identified as the result of a regular inspection (HQS inspection conducted on the PBV project at least biennially or interim inspection (when the PHA inspects a PBV unit at other times as needed, such as when a family or government official notifies the PHA of a deficiency)). See § 983.103 for PHA enforcement actions related to the initial HQS inspection options for PBV existing housing

(1) A PHA may withhold assistance payments for individual units that do not meet HQS once the PHA has notified the owner in writing of the deficiencies. If the unit is brought into compliance during the applicable cure period (24 hours for life-threatening deficiencies and 30 days (or other reasonable period established by the PHA), the PHA must:

(i) Resume assistance payments; and

(ii) Provide assistance payments to cover the time period for which the assistance payments were withheld.

(2)(i) The PHA must abate the HAP for the PBV unit if the owner fails to make the repairs within the applicable cure period (24 hours for life-threatening deficiencies and 30 days (or other reasonable period established by the PHA)). Once the repairs are made and the unit complies with HQS, the PHA must recommence HAP.

(ii) If the PHA abates HAP under this paragraph, the PHA must notify the tenant and the owner that it is abating payments and that if the unit does not meet HQS within 60 days after the determination of noncompliance or a reasonable longer period established by the PHA, the PHA will remove the unit from the HAP contract, and the family will have to move if the family wishes to receive continued assistance. The PHA must provide the family with any forms necessary to move to another unit and transfer the rental assistance accordingly.

(iii) The PHA may choose to abate payments for the entire PBV HAP due to unit's noncompliance with the HQS, even if some of the units continue to meet HQS. The PHA may terminate the entire HAP contract, rather than simply removing the unit from the HAP contract, due to noncompliance with HQS.

(iv) If a PHA abates the HAP for the unit, 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 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 from the HAP contract, and the family will have to move if the family wishes to receive continued assistance. The PHA must issue the family its voucher and provide the family with any other forms necessary to move to another unit with continued HQS 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.

(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. 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.

(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 (c) 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 unit with tenant-based assistance.

(ii) If the family is unable to lease a unit within the period under paragraph (c)(6) of this section and the PHA owns or operates public housing, the PHA must offer, and if accepted,

provide the family a preference for the first appropriately sized public housing unit that becomes available for occupancy after the time period expires.

(iii) PHAs may assist families relocating under this paragraph (c) 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 or reasonable moving costs as determined by the PHA based on their locality. 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.

(d) *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.

(e) *Applicability.* This section is applicable to HAP contracts that were either executed on or renewed after [EFFECTIVE DATE OF FINAL RULE]. For purposes of this paragraph, a HAP contract is renewed when the HAP contract is extended beyond the initial term of the lease. For all other HAP contracts, § 983.208 as in effect on [DATE ONE DAY BEFORE EFFECTIVE DATE OF FINAL RULE] remains applicable.

**43.** In § 983.210, revise paragraphs (a), (c), and (e) and remove paragraph (j).

The revisions read as follows:

**§ 983.210 Owner certification.**

\* \* \* \* \*

(a) The owner is maintaining the premises and all contract units in accordance with HUD's Housing Quality Standards.

\* \* \* \* \*

(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.

\* \* \* \* \*

(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 ADA, for a household member who is a person with disabilities.

\* \* \* \* \*

**44.** In § 983.211, revise paragraph (a) and the final sentence of paragraph (c) to read as follows:

**§ 983.211 Removal of unit from HAP contract.**

(a) Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP contract 180 days following the last housing assistance payment on behalf of the family.

\* \* \* \* \*

(c) \* \* \* Families must be selected in accordance with program requirements under §983.251 of this part.



45. Revise § 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 tenant-based voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission within 60 days prior to commencement of PBV assistance.

(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 voucher 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 ADA, for a family member who is a person with disabilities.

(b) *Protection of in-place families.* (1) In order to minimize displacement of in-place families, if an existing unit or a unit requiring rehabilitation is occupied by an eligible family on the proposal selection date, 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 a project-specific waiting list is not used for the project, the PHA must refer the family to the applicable project owner for an appropriately sized PBV unit in the project.

(2) The in-place family protection applies only to families that are eligible to participate in the PBV program on the proposal selection date. If the in-place family is a tenant-based voucher participant, program eligibility is not re-determined. However, 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 tenant-based lease, an in-place tenant-based voucher family may agree, but is not required, to mutually terminate the tenant-based lease with the owner and enter into a PBV lease. If the family chooses to continue under the tenant-based lease, 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 of the tenant-based lease 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) After the initial term of the tenant-based lease, an owner may choose not to renew the tenant-based lease or may terminate the tenant-based lease for other good cause (as defined in § 982.310(d)). In this case, the family would be required to move with continued tenant-based assistance or relinquish the tenant-based voucher and enter into a PBV lease.

(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 has the following options in determining how 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 option in paragraph (c)(2)(i) or (ii) of this section. The PHA may permit the owner to maintain such waiting lists (*see* § 983.251(c)(7) for more information).

(3) For any of the options under paragraph (c)(2) of this section, the waiting list may establish preferences for occupancy of particular units. 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 permit owners to maintain such waiting lists. PHAs may choose to use owner-maintained PBV waiting lists for specific owners or projects. And, 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. Where a PHA allows for owner-maintained waiting lists, all the following apply:

(i) The owner must develop and submit a written tenant selection plan to the PHA for approval. The tenant selection plan 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 tenant selection plan in accordance with the process established in the PHA's Administrative Plan. The owner's tenant-selection plan 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 tenant selection plan. Each project may have a different set of preferences. Preferences must be consistent with the PHA plan and listed in the owner's tenant-selection plan.

(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 § 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 § 982.206 and the tenant selection plan.

(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. 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 §§ 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 fair housing requirements under the authorities cited at 24 CFR 5.105(a). The owner is responsible for maintaining complete and accurate records as described in § 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 § 982.158(c). HUD may take 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 and 100.202). Also see § 983.260.

(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 § 982.207(b)(3) continues to apply.

(2) Families shall not be required to accept the particular services offered at the project.

(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 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 or the owner's rejection of the family. The family's position on any other project-specific PBV waiting list is not affected.

(3) None of the following actions may be taken against an applicant who 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.

**46.** Revise § 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. The briefing must include information on the following subjects:

- (1) A description of how the program works;
- (2) Family and owner responsibilities; and
- (3) Family right to move.

(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;
- (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 reasonable accommodations and modifications under Section 504, the Fair Housing Act, or the ADA; and

- (4) PHA subsidy standards, including when the PHA will consider granting exceptions to the standards, including when required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act, or the ADA.

(c) *Providing information for persons with disabilities.* (1) The PHA must take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E, in conducting the oral briefing and in providing the written information packet, including in alternative formats.

- (2) 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) *Providing information for persons with limited English proficiency.* The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964, Executive Order 13166, and HUD's LEP Guidance.

47. In § 983.253, revise 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.

\* \* \* \* \*

48. 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.

(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 promptly make such final eligibility determination.

(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 refer promptly a sufficient number of families for the owner to fill such vacancies.

(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.

**49.** Revise § 983.257 to read as follows:

**§ 983.257 Owner termination of tenancy and eviction.**

24 CFR 982.310 applies with the exception that § 982.310(d)(1)(iii) and (iv) do 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.) 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part. 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this part.

50. Revise § 983.259 to read as follows:

**§ 983.259 Security deposit: Amounts owed by tenant.**

(a) *Security deposit permitted.* The owner may collect a security deposit from the tenant.

(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.* When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease.

(d) *Security deposit reimbursement to owner.* The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

(e) *Insufficiency of security deposit.* If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

51. 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, within 30 days from the PHA's determination:

(i) Notify the family and the owner of this determination, and

(ii) Offer the family continued housing assistance in another unit, pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.* The PHA policy on continued housing assistance must be stated in the Administrative Plan and may be in the form of:

(1) Project-based voucher assistance in an appropriate-size unit (in the same project or in another project);

(2) Other project-based housing assistance (e.g., by occupancy of a public housing unit);

(3) Tenant-based rental assistance under the voucher program; or

(4) Other comparable public or private tenant-based assistance (e.g., under the HOME program).

(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 a tenant-based voucher), in accordance with paragraph (b)(3) 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) 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.

(ii) 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.

**52.** Revise § 983.262 to read as follows:

**§ 983.262 When occupancy may exceed the project cap.**

(a) *General.* Pursuant to § 983.54(a), the PHA may not 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 excepted units.

(b) *Excepted units.* A unit is excepted only if it is occupied by a family who qualifies for the exception; that is, by an elderly family, or a family eligible for supportive services, as applicable.

(1) Families who will occupy excepted units must be selected from the waiting list for the PBV program through an admissions preference (*see* § 983.251).

(2) Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a family that qualifies for the exception.

(c) *Supportive services exception.* 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. 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. The unit loses its excepted status only if the entire family becomes ineligible during the tenancy for all supportive services available to the family. A family cannot be terminated from the program or evicted from the unit because they become ineligible for all supportive services during the tenancy. *See* paragraph (f) of this section.

(d) *Elderly family exception.* The PHA may 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 (f) of this section.

(e) Disabled family exception. The same provisions of paragraph (d) of this section apply to units previously excepted based on disabled family status under a HAP contract in effect prior to April 18, 2017.

(f) *Unit loss of excepted status.* If a unit loses its excepted status, the PHA may do one or more of the following:

(1) Substitute the excepted unit for a non-excepted unit if it is possible to do so in accordance with § 983.207(a), so that the overall number of excepted units in the project is not reduced.

(2) Temporarily remove the unit from the PBV HAP contract and provide the family with tenant-based assistance. The family and the owner may agree to use the tenant-based voucher on the unit; otherwise, the family must move from the unit with the tenant-based voucher.

(3) Change the unit's designation to a non-excepted unit, provided that the change in designation does not place non-excepted units above the project cap.

**53.** In § 983.301, revise paragraphs (f) and (g) to read as follows:

**§ 983.301 Determining the rent to owner.**

\* \* \* \* \*

(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 any area in which Small Area FMRs are not in effect, any HUD-approved exception payment standard amount under 24 CFR 982.503(c) applies to both the tenant-based and project-based voucher programs. HUD will not approve a different payment standard amount for use in the PBV program.

(ii) For any area in which SAFMRs are in effect, a HUD-approved exception payment standard amount under 24 CFR 982.503(c) will apply to a PHA's project-based voucher programs only if the PHA has adopted a policy applying SAFMRs to its PBV program in accordance with 24 CFR 888.113(h).

(4) At the request of the PHA, the HUD field office may approve a PHA's request to establish a project-specific utility allowance for a PBV-assisted project. Absent the establishment of such a project-specific utility allowance, the PHA's utility allowance schedule applies to both the tenant-based and PBV programs.

(i) The PHA request to establish a project-specific utility allowance must demonstrate that the utility allowances used in its voucher program would either create an undue cost on families (because the utility allowance provided under the voucher program is too low), or that use of the utility allowances will discourage conservation and efficient use of HAP funds (because the utility allowances provided under the voucher program would be excessive if applied to the project). The PHA must submit an analysis of utility rates for the community and consumption data of project residents in comparison to community consumption rates; and a proposed alternative methodology for calculating utility allowances on an ongoing basis.

(ii) A PHA that has established a HUD-approved project-specific utility allowance must use the same utility allowance for residents of the project who have tenant-based assistance.



(iii) HUD may establish additional standards or requirements for PHA requests to establish project specific utility allowances, including but not limited to circumstances where there is another form of rental assistance at the project, through a Federal Register notice subject to public comment.

(g) *PHA-owned units.* For PHA-owned PBV units, the initial rent to owner, the annual redetermination of rent at the annual anniversary of the HAP contract, and any project-specific utility allowance must be determined by an independent entity in accordance with § 983.57. The PHA must use the rent to owner established by the independent entity.

54. 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) Upon the owner's request; or
- (2) When there is a 10 percent decrease in the published FMR.

(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)(i) 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. Regardless of the method of adjustment, the rent increase must not result in a rent that exceeds the maximum rent, as determined pursuant to § 983.301.

(ii) 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 (which shall not result in a negative adjustment) 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 (b)(2)(ii)(A) through (D) apply to a contract that provides for rent adjustments using an OCAF:

(A) A rent adjustment using an OCAF may not exceed the maximum rent determined by the PHA pursuant to § 983.301.

(B) The contract may require an additional increase up to the maximum rent determined by the PHA pursuant to § 983.301, if requested by the owner in writing, periodically during the term of the contract.

(C) The contract shall require an additional increase up to the maximum rent determined by the PHA pursuant to § 983.301 at the point of contract extension, if requested by the owner in writing.

(D) A PHA may not provide a rent adjustment that will result in rents that exceed the maximum rent determined by the PHA pursuant to § 983.301.

(iii) 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.

(iv) 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).

(3) 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. The owner may not receive any retroactive increase of rent for any period of noncompliance.

(c) *Rent decrease.* (1) If 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 contract provides for rent adjustments pursuant to an OCAF or if an 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. 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. 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) See § 983.207(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

55. In § 983.303, revise paragraph (f) to read as follows:

**§ 983.303 Reasonable rent.**

\* \* \* \* \*

(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 where the project is located.

**PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

56. The authority for part 985 continues to read as follows:

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

**57.** In § 985.1, revise paragraph (b) to read as follows:

**§ 985.1 Purpose and applicability.**

\* \* \* \* \*

(b) *Applicability.* This rule applies to PHA administration of the Housing Choice Voucher (HCV) program (24 CFR part 982), the project-based component (PBC) of the certificate program and the Project-Based Voucher (PBV) program (24 CFR part 983) to the extent that PBC and PBV family and unit data are reported and measured under the stated HUD verification method, and enrollment levels and contributions to escrow accounts for Section 8 participants under the family self-sufficiency program (FSS) (24 CFR part 984).

**58.** In § 985.3, revise the final sentence in paragraph (i)(1) to read as follows:

**§ 985.3 Indicators, HUD verification methods and ratings.**

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \* For purposes of this paragraph (i)(1), payment standards include exception payment standards established by the PHA in accordance with 24 CFR 982.503(d)(2).

\* \* \* \* \*

Date: September 23, 2020.

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R. Hunter Kurtz

Assistant Secretary for Public and Indian Housing

**[Billing Code 4210-67]**

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