

PART 982 - SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

Authority: [42 U.S.C. 1437f](#) and [3535\(d\)](#).

Source: [59 FR 36682](#), July 18, 1994, unless otherwise noted.

Editorial Note

Editorial Note: Nomenclature changes to part 982 appear at [64 FR 26640](#), May 14, 1999.

Subpart A - General Information

Source: [60 FR 34695](#), July 3, 1995, unless otherwise noted.

§ 982.1 Programs: purpose and structure.

(a) *General description.*

(1) In the HUD Housing Choice Voucher (HCV) program, HUD pays rental subsidies so eligible families can afford decent, safe, and sanitary housing. The HCV program is generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the program.

(2) Families select and rent units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family. A PHA may not approve a tenancy unless the rent is reasonable.

(3) Subsidy in the HCV program is based on a local "payment standard" that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

(b) *Tenant-based and project-based assistance.*

(1) Section 8 assistance may be "tenant-based" or "project-based". In project-based programs, rental assistance is paid for families who live in specific housing developments or units. With tenant-based assistance, the assisted unit is selected by the family. The family may rent a unit anywhere in the United States in the jurisdiction of a PHA that runs a voucher program.

(2) To receive tenant-based assistance, the family selects a suitable unit. After approving the tenancy, the PHA enters into a contract to make rental subsidy payments to the owner to

subsidize occupancy by the family. The PHA contract with the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued assistance so long as the family is complying with program requirements.

[[60 FR 34695](#), July 3, 1995, as amended at [64 FR 26640](#), May 14, 1999; [80 FR 8245](#), Feb. 17, 2015]

§ 982.2 Applicability.

Part 982 contains the program requirements for the tenant-based housing assistance program under Section 8 of the United States Housing Act of 1937 ([42 U.S.C. 1437f](#)). The tenant-based program is the HCV program.

[[80 FR 8245](#), Feb. 17, 2015]

§ 982.3 HUD.

The HUD field offices have been delegated responsibility for day-to-day administration of the program by HUD. In exercising these functions, the field offices are subject to HUD regulations and other HUD requirements issued by HUD headquarters. Some functions are specifically reserved to HUD headquarters.

§ 982.4 Definitions.

(a) *Definitions found elsewhere -*

(1) ***General definitions.*** The following terms are defined in [part 5, subpart A of this title](#): 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) ***Definitions concerning family income and rent.*** 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 part 982.

(b) In addition to the terms listed in [paragraph \(a\)](#) of this section, the following definitions apply:

Absorption. For purposes of subpart H, the point at which a receiving PHA starts making assistance payments with funding under its consolidated ACC, rather than billing, the initial PHA.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See [§ 982.152](#).

Administrative fee reserve (formerly “operating reserve”). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See [§ 982.155](#).

Administrative plan. The plan that describes PHA policies for administration of the HCV program. See [§ 982.54](#).

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in the tenant-based program.

Applicant (applicant family). A family that has applied for admission to the HCV program but is not yet a program participant.

Budget authority. An amount authorized and appropriated by the Congress for payment to PHAs under the HCV program. For each funding increment in the program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

Common space. In shared housing: Space available for use by the assisted family and other occupants of the unit.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see [§ 982.606](#) to [§ 982.609](#).

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to the HCV program.

Cooperative. Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.

Cooperative member. A family of which one or more members owns membership shares in a cooperative.

Domicile. The legal residence of the household head or spouse as determined in accordance with State and local law.

Downpayment assistance grant. A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for

purchase of the home or reasonable and customary closing costs required in connection with purchase of the home.

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. See periodic publications in the Federal Register in accordance with [24 CFR part 888](#).

Family. A person or group of persons, as determined by the PHA consistent with [24 CFR 5.403](#), approved to reside in a unit with assistance under the program. See “family composition” at [§ 982.201\(c\)](#).

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see [§ 982.515\(b\)](#).

Family self-sufficiency program (FSS program). The program established by a PHA in accordance with [24 CFR part 984](#) to promote self-sufficiency of assisted families, including the coordination of supportive services ([42 U.S.C. 1437u](#)).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see [§ 982.515\(a\)](#).

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

First-time homeowner. In the homeownership option: A family of which no member owned any present ownership interest in a residence of any family member during the three years before commencement of homeownership assistance for the family. The term “first-time homeowner” includes a single parent or displaced homemaker (as those terms are defined in [12 U.S.C. 12713](#)) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see [§ 982.610](#) to [§ 982.614](#).

HAP contract. Housing assistance payments contract.

Home. In the homeownership option: A dwelling unit for which the PHA pays homeownership assistance.

Homeowner. In the homeownership option: A family of which one or more members owns title to the home.

Homeownership assistance. Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by a PHA for a family: monthly homeownership assistance payments, or a single downpayment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

Homeownership expenses. In the homeownership option: A family's allowable monthly expenses for the home, as determined by the PHA in accordance with HUD requirements (see [§ 982.635](#)).

Homeownership option. Assistance for a homeowner or cooperative member under [§ 982.625](#) to [§ 982.641](#). A special housing type.

Housing assistance payment. The monthly assistance payment by a PHA, which includes:

- (1) A payment to the owner for rent to the owner under the family's lease; and
- (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the HCV program. See [§ 982.401](#).

Initial PHA. In portability, the term refers to both:

- (1) a PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and
- (2) a PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Interest in the home. In the homeownership option:

- (1) In the case of assistance for a homeowner, “interest in the home” includes title to the home, any lease or other right to occupy the home, or any other present interest in the home.
- (2) In the case of assistance for a cooperative member, “interest in the home” includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

Jurisdiction. The area in which the PHA has authority under State and local law to administer the program.

Lease.

(1) A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

(2) In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA. For purposes of this part 982, the cooperative is the Section 8 “owner” of the unit, and the cooperative member is the Section 8 “tenant.”

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see [§ 982.620](#) and [§ 982.621](#).

Manufactured home space. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See [§ 982.622](#) to [§ 982.624](#).

Membership shares. In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular unit in the cooperative, and the right to participate in management of the housing.

Merger date. October 1, 1999, which is the effective date of the merger of the two tenant-based programs (the housing voucher and housing certificate programs) into the Housing Choice Voucher (HCV) program.

Notice of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the Federal Register document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

PHA plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD in accordance with [part 903 of this chapter](#).

Portability. Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Present homeownership interest. In the homeownership option: “Present ownership interest” in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. “Present ownership interest” in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

Program. The Section 8 HCV program under this part.

Program receipts. HUD payments to the PHA under the consolidated ACC, and any other amounts received by the PHA in connection with the program.

Public housing agency (PHA). PHA includes both:

- (1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), and
- (2) Any of the following:
 - (i) A consortium of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortium members);
 - (ii) Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) on October 21, 1998; or
 - (iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

Reasonable rent. A rent to owner that is not more than rent charged:

- (1) For comparable units in the private unassisted market; and

(2) For comparable unassisted units in the premises.

Receiving PHA. In portability: A PHA that receives a family selected for participation in the HCV program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

Renewal units. The number of units, as determined by HUD, for which funding is reserved on HUD books for a PHA's program. This number is used in calculating renewal budget authority in accordance with [§ 982.102](#).

Rent to owner. The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

Residency preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see [§ 982.615](#) to [§ 982.618](#).

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see [§ 982.602](#) to [§ 982.605](#).

Special admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

Special housing types. See [subpart M of this part](#) 982. [Subpart M of this part](#) states the special regulatory requirements for: SRO housing, congregate housing, group home, shared housing, manufactured home (including manufactured home space rental), cooperative housing (rental assistance for cooperative member) and homeownership option (homeownership assistance for cooperative member or first-time homeowner).

Statement of homeowner obligations. In the homeownership option: The family's agreement to comply with program obligations.

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. The term on the family's voucher stops from the date that the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Utility reimbursement. The portion of the housing assistance payment which exceeds the amount of the rent to owner. (See [§ 982.514\(b\)](#)).

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher (rental voucher). A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Waiting list admission. An admission from the PHA waiting list.

Welfare-to-work (WTW) families. Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

[[63 FR 23857](#), Apr. 30, 1998; [63 FR 31625](#), June 10, 1998, as amended at [64 FR 26641](#), May 14, 1999; [64 FR 49658](#), Sept. 14, 1999; [64 FR 56887](#), [56911](#), Oct. 21, 1999; [65 FR 16821](#), Mar. 30, 2000; [65 FR 55161](#), Sept. 12, 2000; [66 FR 28804](#), May 24, 2001; [66 FR 33613](#), June 22, 2001; [67 FR 64492](#), Oct. 18, 2002; [77 FR 5675](#), Feb. 3, 2012; [80 FR 8245](#), Feb. 17, 2015; [80 FR 50572](#), Aug. 20, 2015]

§ 982.5 Notices required by this part.

Where part 982 requires any notice to be given by the PHA, the family or the owner, the notice must be in writing.

Subpart B - HUD Requirements and PHA Plan for Administration of Program

Source: [60 FR 34695](#), July 3, 1995, unless otherwise noted.

§ 982.51 PHA authority to administer program.

(a) The PHA must have authority to administer the program. The PHA must provide evidence, satisfactory to HUD, of its status as a PHA, of its authority to administer the program, and of the PHA jurisdiction.

(b) The evidence submitted by the PHA to HUD must include enabling legislation and a supporting legal opinion satisfactory to HUD. The PHA must submit additional evidence when there is a change that affects its status as a PHA, its authority to administer the program, or its jurisdiction.

[[60 FR 34695](#), July 3, 1995, as amended at [64 FR 26641](#), May 14, 1999; [80 FR 8245](#), Feb. 17, 2015]

§ 982.52 HUD requirements.

(a) The PHA must comply with HUD regulations and other HUD requirements for the program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

(b) The PHA must comply with the consolidated ACC and the PHA's HUD-approved applications for program funding.

(Approved by the Office of Management and Budget under control number 2577-0169)

[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995]

§ 982.53 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.

(a) The tenant-based program requires compliance with all equal opportunity requirements imposed by contract or federal law, including the authorities cited at [24 CFR 5.105\(a\)](#) and title II of the Americans with Disabilities Act, [42 U.S.C. 12101](#) *et seq.*

(b) ***Civil rights certification.*** The PHA must submit a signed certification to HUD that:

(1) The PHA will administer the program in conformity with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act.

(2) The PHA will affirmatively further fair housing in the administration of the program.

(c) ***Obligation to affirmatively further fair housing.*** The PHA shall affirmatively further fair housing as required by [§ 903.7\(o\) of this title](#).

(d) ***State and local law.*** Nothing in part 982 is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder. However, such State and local laws shall not change or affect any

requirement of this part, or any other HUD requirements for administration or operation of the program.

(e) ***Protection for victims of domestic violence, dating violence, sexual assault, or stalking.***

The PHA must apply the requirements in [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD's regulations in [24 CFR part 5, subpart L](#), the covered housing provider is the PHA or owner, 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\(e\)](#).

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [63 FR 23859](#), Apr. 30, 1998; [64 FR 26641](#), May 14, 1999; [64 FR 56911](#), Oct. 21, 1999; [73 FR 72344](#), Nov. 28, 2008; [75 FR 66263](#), Oct. 27, 2010; [80 FR 8245](#), Feb. 17, 2015; [81 FR 80816](#), Nov. 16, 2016]

§ 982.54 Administrative plan.

(a) The PHA must adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements. The administrative plan and any revisions of the plan must be formally adopted by the PHA Board of Commissioners or other authorized PHA officials. The administrative plan states PHA policy on matters for which the PHA has discretion to establish local policies.

(b) The administrative plan must be in accordance with HUD regulations and requirements. The administrative plan is a supporting document to the PHA plan ([part 903 of this title](#)) and must be available for public review. The PHA must revise the administrative plan if needed to comply with HUD requirements.

(c) The PHA must administer the program in accordance with the PHA administrative plan.

(d) The PHA administrative plan must cover PHA policies on these subjects:

(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](#);

(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) The process for establishing and revising payment standards, including policies on administering decreases in the payment standard during the HAP contract term (see [§ 982.505\(d\)\(3\)](#)).

(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) Interim redeterminations of family income and composition;
- (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 HQS inspections; and
- (22) PHA screening of applicants for family behavior or suitability for tenancy.
- (23) Policies concerning application of Small Area FMRs to project-based voucher units (see [§ 888.113](#)).

Subpart E - Admission to Tenant-Based Program

§ 982.201 Eligibility and targeting.

(a) ***When applicant is eligible: General.*** The PHA may admit only eligible families to the program. To be eligible, an applicant must be a “family;” must be income-eligible in accordance with [paragraph \(b\)](#) of this section and [24 CFR part 5, subpart F](#); and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with [24 CFR part 5, subpart E](#). If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

(b) ***Income -***

(1) ***Income-eligibility.*** To be income-eligible, the applicant must be a family in any of the following categories:

- (i) A “very low income” family;
- (ii) A low-income family that is “continuously assisted” under the 1937 Housing Act;
- (iii) A low-income family that meets additional eligibility criteria specified in the PHA administrative plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;
- (iv) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act ([42 U.S.C. 1437f\(o\)\(4\)\(D\)](#));

(v) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in [§ 248.101 of this title](#);

(vi) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under [§ 248.173 of this title](#).

(2) *Income-targeting.*

(i) Not less than 75 percent of the families admitted to a PHA's HCV program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. Annual income of such families shall be verified within the period described in [paragraph \(e\)](#) of this section.

(ii) A PHA may admit a lower percent of extremely low income families during a PHA fiscal year (than otherwise required under [paragraph \(b\)\(2\)\(i\)](#) of this section) if HUD approves the use of such lower percent by the PHA, in accordance with the PHA plan, based on HUD's determination that the following circumstances necessitate use of such lower percent by the PHA:

(A) The PHA has opened its waiting list for a reasonable time for admission of extremely low income families residing in the same metropolitan statistical area (MSA) or non-metropolitan county, both inside and outside the PHA jurisdiction;

(B) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to such families, including outreach and marketing to extremely low income families on the Section 8 and public housing waiting lists of other PHAs with jurisdiction in the same MSA or non-metropolitan county;

(C) Notwithstanding such actions by the PHA (in accordance with [paragraphs \(b\)\(2\)\(ii\)\(A\)](#) and [\(B\)](#) of this section), there are not enough extremely low income families on the PHA's waiting list to fill available slots in the program during any fiscal year for which use of a lower percent is approved by HUD; and

(D) Admission of the additional very low income families other than extremely low income families to the PHA's tenant-based voucher program will substantially address worst case housing needs as determined by HUD.

(iii) If approved by HUD, the admission of a portion of very low income welfare-to-work (WTW) families that are not extremely low income families may be disregarded in determining compliance with the PHA's income-targeting obligations under [paragraph \(b\)\(2\)\(i\)](#) of this section. HUD will grant such approval only if and to the extent that the PHA has demonstrated to HUD's satisfaction that compliance with such targeting obligations with respect to such portion of WTW families would interfere with the objectives of the welfare-to-work voucher program. If HUD grants such approval,

admission of that portion of WTW families is not counted in the base number of families admitted to a PHA's tenant-based voucher program during the fiscal year for purposes of income targeting.

(iv) Admission of families as described in [paragraphs \(b\)\(1\)\(ii\)](#) or [\(b\)\(1\)\(v\)](#) of this section is not subject to targeting under [paragraph \(b\)\(2\)\(i\)](#) of this section.

(v) If the jurisdictions of two or more PHAs that administer the HCV program cover an identical geographic area, such PHAs may elect to be treated as a single PHA for purposes of targeting under [paragraph \(b\)\(2\)\(i\)](#) of this section. In such a case, the PHAs shall cooperate to assure that aggregate admissions by such PHAs comply with the targeting requirement. If such PHAs do not have a single fiscal year, HUD will determine which PHA's fiscal year is used for this purpose.

(vi) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the HCV program, such admission shall be counted against the targeting obligation of the initial PHA (unless the receiving PHA absorbs the portable family into the receiving PHA's HCV program from the point of admission).

(3) The annual income (gross income) of an applicant family is used both for determination of income-eligibility under [paragraph \(b\)\(1\)](#) of this section and for targeting under [paragraph \(b\)\(2\)\(i\)](#) of this section. In determining annual income of an applicant family that includes a person with disabilities, the determination must include the disallowance of increase in annual income as provided in [24 CFR 5.617](#), if applicable.

(4) The applicable income limit for issuance of a voucher when a family is selected for the program is the highest income limit (for the family size) for areas in the PHA jurisdiction. The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted in the program. At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.

(c) ***Family composition.*** See definition of “family” in [24 CFR 5.403](#).

(d) ***Continuously assisted.***

(1) An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

(2) The PHA must establish policies concerning whether and to what extent a brief interruption between assistance under one of these programs and admission to the voucher program will be considered to break continuity of assistance under the 1937 Housing Act.

(e) ***When PHA verifies that applicant is eligible.*** 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.

(f) ***Decision to deny assistance*** -

(1) ***Notice to applicant.*** The PHA must give an applicant prompt written notice of a decision denying admission to the program (including a decision that the applicant is not eligible, or denying assistance for other reasons). The notice must give a brief statement of the reasons for the decision. The notice must also state that the applicant may request an informal review of the decision, and state how to arrange for the informal review.

(2) For description of the grounds for denying assistance because of action or inaction by the applicant, see [§ 982.552\(b\)](#) and [\(c\)](#) (requirement and authority to deny admission) and [§ 982.553\(a\)](#) (crime by family members).

[[59 FR 36682](#), July 18, 1994, as amended at [60 FR 34717](#), July 3, 1995; [61 FR 13627](#), Mar. 27, 1996; [64 FR 26642](#), May 14, 1999; [64 FR 49658](#), Sept. 14, 1999; [64 FR 56911](#), Oct. 21, 1999; [66 FR 6226](#), Jan. 19, 2001; [66 FR 8174](#), Jan. 30, 2001; [67 FR 6820](#), Feb. 13, 2002; [70 FR 77744](#), Dec. 30, 2005; [73 FR 72344](#), Nov. 28, 2008; [75 FR 66263](#), Oct. 27, 2010; [77 FR 5676](#), Feb. 3, 2012; [80 FR 8246](#), Feb. 17, 2015; [81 FR 80816](#), Nov. 16, 2016]

§ 982.202 How applicants are selected: General requirements.

(a) ***Waiting list admissions and special admissions.*** The PHA may admit an applicant for participation in the program either:

- (1) As a special admission (see [§ 982.203](#)).
- (2) As a waiting list admission (see [§ 982.204](#) through [§ 982.210](#)).

(b) ***Prohibited admission criteria*** -

(1) ***Where family lives.*** Admission to the program may not be based on where the family lives before admission to the program. However, the PHA may target assistance for families who live in public housing or other federally assisted housing, or may adopt a residency preference (see [§ 982.207](#)).

(2) ***Where family will live.*** Admission to the program may not be based on where the family will live with assistance under the program.

(3) ***Family characteristics.*** The PHA preference system may provide a preference for admission of families with certain characteristics from the PHA waiting list. However, admission to the program may not be based on:

- (i) Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;

(ii) Discrimination because a family includes children (familial status discrimination);

(iii) Discrimination because of age, race, color, religion, sex, or national origin;

(iv) Discrimination because of disability; or

(v) Whether a family decides to participate in a family self-sufficiency program.

(c) ***Applicant status.*** An applicant does not have any right or entitlement to be listed on the PHA waiting list, to any particular position on the waiting list, or to admission to the programs. The preceding sentence does not affect or prejudice any right, independent of this rule, to bring a judicial action challenging an PHA violation of a constitutional or statutory requirement.

(d) ***Admission policy.*** The PHA must admit applicants for participation in accordance with HUD regulations and other requirements, including, but not limited to, [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to select applicants from the waiting list, including any residency preference or other local preference.

[[59 FR 36682](#), July 18, 1994, as amended at [60 FR 34717](#), July 3, 1995; [61 FR 9048](#), Mar. 6, 1996; [61 FR 27163](#), May 30, 1996; [64 FR 26643](#), May 14, 1999; [65 FR 16821](#), Mar. 30, 2000; [73 FR 72344](#), Nov. 28, 2008; [75 FR 66263](#), Oct. 27, 2010; [81 FR 80816](#), Nov. 16, 2016]

§ 982.203 Special admission (non-waiting list): Assistance targeted by HUD.

(a) If HUD awards a PHA program funding that is targeted for families living in specified units:

(1) The PHA must use the assistance for the families living in these units.

(2) The PHA may admit a family that is not on the PHA waiting list, or without considering the family's waiting list position. The PHA must maintain records showing that the family was admitted with HUD-targeted assistance.

(b) The following are examples of types of program funding that may be targeted for a family living in a specified unit:

(1) A family displaced because of demolition or disposition of a public housing project;

(2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;

(3) For housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990 ([41 U.S.C. 4101](#) *et seq.*):

(i) A non-purchasing family residing in a project subject to a homeownership program (under [24 CFR 248.173](#)); or

(ii) A family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract (as provided in [24 CFR 248.165](#));

(4) A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and

(5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project.

[[59 FR 36682](#), July 18, 1994, as amended at [64 FR 26643](#), May 14, 1999]

§ 982.204 Waiting list: Administration of waiting list.

(a) ***Admission from waiting list.*** Except for special admissions, participants must be selected from the PHA waiting list. The PHA must select participants from the waiting list in accordance with admission policies in the PHA administrative plan.

(b) ***Organization of waiting list.*** The PHA must maintain information that permits the PHA to select participants from the waiting list in accordance with the PHA admission policies. The waiting list must contain the following information for each applicant listed:

(1) Applicant name;

(2) Family unit size (number of bedrooms for which family qualifies under PHA occupancy standards);

(3) Date and time of application;

(4) Qualification for any local preference;

(5) Racial or ethnic designation of the head of household.

(c) ***Removing applicant names from the waiting list.***

(1) The PHA administrative plan must state PHA policy on when applicant names may be removed from the waiting list. The policy may provide that the PHA will remove names of applicants who do not respond to PHA requests for information or updates.

(2) An PHA decision to withdraw from the waiting list the name of an applicant family that includes a person with disabilities is subject to reasonable accommodation in accordance with [24 CFR part 8](#). If the applicant did not respond to the PHA request for information or

updates because of the family member's disability, the PHA must reinstate the applicant in the family's former position on the waiting list.

(d) ***Family size.***

(1) The order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the PHA occupancy policy.

(2) If the PHA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the PHA may not skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available.

(e) ***Funding for specified category of waiting list families.*** When HUD awards an PHA program funding for a specified category of families on the waiting list, the PHA must select applicant families in the specified category.

(f) ***Number of waiting lists.*** A PHA must use a single waiting list for admission to its Section 8 tenant-based assistance program. However, the PHA may use a separate single waiting list for such admissions for a county or municipality.

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[[59 FR 36682](#), July 18, 1994, as amended at [60 FR 34717](#), July 3, 1995; [63 FR 23860](#), Apr. 30, 1998; [64 FR 26643](#), May 14, 1999; [65 FR 16821](#), Mar. 30, 2000]

§ 982.205 Waiting list: Different programs.

(a) ***Merger and cross-listing -***

(1) ***Merged waiting list.*** A PHA may merge the waiting list for tenant-based assistance with the PHA waiting list for admission to another assisted housing program, including a federal or local program. In admission from the merged waiting list, admission for each federal program is subject to federal regulations and requirements for the particular program.

(2) ***Non-merged waiting list: Cross-listing.*** If the PHA decides not to merge the waiting list for tenant-based assistance with the waiting list for the PHA's public housing program, project-based voucher program or moderate rehabilitation program:

(i) If the PHA's waiting list for tenant-based assistance is open when an applicant is placed on the waiting list for the PHA's public housing program, project-based voucher program or moderate rehabilitation program, the PHA must offer to place the applicant on its waiting list for tenant-based assistance.

(ii) If the PHA's waiting list for its public housing program, project-based voucher program or moderate rehabilitation program is open when an applicant is placed on the waiting list

for its tenant-based program, and if the other program includes units suitable for the applicant, the PHA must offer to place the applicant on its waiting list for the other program.

(b) ***Other housing assistance: Effect of application for, receipt or refusal.***

(1) For purposes of this section, “other housing subsidy” means a housing subsidy other than assistance under the voucher program. Housing subsidy includes subsidy assistance under a federal housing program (including public housing), a State housing program, or a local housing program.

(2) The PHA may not take any of the following actions because an applicant has applied for, received, or refused other housing assistance:

- (i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;
- (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 under the PHA selection policy; or
- (iv) Remove the applicant from the waiting list.

[[59 FR 36682](#), July 18, 1994, as amended at [61 FR 27163](#), May 30, 1996; [63 FR 23860](#), Apr. 30, 1998; [64 FR 26643](#), May 14, 1999; [65 FR 16821](#), Mar. 30, 2000; [80 FR 8246](#), Feb. 17, 2015]

§ 982.206 Waiting list: Opening and closing; public notice.

(a) ***Public notice.***

(1) When the PHA opens a waiting list, the PHA must give public notice that families may apply for tenant-based assistance. The public notice must state where and when to apply.

(2) The PHA must give the public notice by publication in a local newspaper of general circulation, and also by minority media and other suitable means. The notice must comply with HUD fair housing requirements.

(3) The public notice must state any limitations on who may apply for available slots in the program.

(b) ***Criteria defining what families may apply.***

(1) The PHA may adopt criteria defining what families may apply for assistance under a public notice.

(2) If the waiting list is open, the PHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance because of action or inaction by members of the family) for the grounds stated in [§§ 982.552](#) and [982.553](#).

(c) ***Closing waiting list.*** If the PHA determines that the existing waiting list contains an adequate pool for use of available program funding, the PHA may stop accepting new applications, or may accept only applications meeting criteria adopted by the PHA.

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[[59 FR 36682](#), July 18, 1994, as amended at [60 FR 34717](#), July 3, 1995; [60 FR 45661](#), Sept. 1, 1995; [63 FR 23860](#), Apr. 30, 1998; [64 FR 26643](#), May 14, 1999]

§ 982.207 Waiting list: Local preferences in admission to program.

(a) ***Establishment of PHA local preferences.***

(1) The PHA may establish a system of local preferences for selection of families admitted to the program. PHA selection preferences must be described in the PHA administrative plan.

(2) The PHA system of local preferences must be based on local housing needs and priorities, as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. The PHA shall consider public comment on the proposed public housing agency plan (as received pursuant to [§ 903.17 of this chapter](#)) and on the consolidated plan for the relevant jurisdiction (as received pursuant to [part 91 of this title](#)).

(3) The PHA may limit the number of applicants that may qualify for any local preference.

(4) The PHA shall not deny a local preference, nor otherwise exclude or penalize a family in admission to the program, solely because the family resides in a public housing project. The PHA may establish a preference for families residing in public housing who are victims of a crime of violence (as defined in [18 U.S.C. 16](#)).

(b) ***Particular local preferences -***

(1) ***Residency requirements or preferences.***

(i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at [§ 5.105\(a\) of this title](#).

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area (“residency preference area”). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to [part 903 of this title](#). Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) ***Preference for working families.*** The PHA may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

(3) ***Preference for person with disabilities.*** The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for admission of persons with a specific disability.

(4) ***Preference for victims of domestic violence, dating violence, sexual assault, or stalking.*** The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.

(5) ***Preference for single persons who are elderly, displaced, homeless, or persons with disabilities.*** The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

(c) ***Selection among families with preference.*** The PHA system of preferences may use either of the following to select among applicants on the waiting list with the same preference status:

(1) Date and time of application; or

(2) A drawing or other random choice technique.

(d) ***Preference for higher-income families.*** The PHA must not select families for admission to the program in an order different from the order on the waiting list for the purpose of selecting higher income families for admission to the program.

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

Subpart G - Leasing a Unit

Source: [60 FR 34695](#), July 3, 1995, unless otherwise noted.

§ 982.301 Information when family is selected.

(a) ***PHA briefing of family.***

(1) When the PHA selects a family to participate in a tenant-based program, the PHA must give the family an oral briefing. The briefing must include information on the following subjects:

(i) A description of how the program works;

(ii) Family and owner responsibilities; and

(iii) Where the family may lease a unit, including renting a dwelling unit inside or outside the PHA jurisdiction, and any information on selecting a unit that HUD provides.

(2) An explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction, or outside the PHA jurisdiction under portability procedures, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order. The family must be informed of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance.

(3) The briefing must also explain the advantages of areas that do not have a high concentration of low-income families.

(4) In briefing a family that includes any disabled person, the PHA must take appropriate steps to ensure effective communication in accordance with [24 CFR 8.6](#).

(5) In briefing a welfare-to-work family, the PHA must include specification of any local obligations of a welfare-to-work family and an explanation that failure to meet these obligations is grounds for PHA denial of admission or termination of assistance.

(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 which 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;

(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, and a copy of the housing discrimination complaint form;

(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 disabled person, the family may request a current listing of accessible units known to the PHA that may be available;

(13) Family obligations under the program;

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

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

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [61 FR 27163](#), May 30, 1996; [64 FR 26644](#), May 14, 1999; [64 FR 50229](#), Sept. 15, 1999; [64 FR 56912](#), Oct. 21, 1999; [80 FR 50572](#), Aug. 20, 2015; [80 FR 52619](#), Sept. 1, 2015]

§ 982.302 Issuance of voucher; Requesting PHA approval of assisted tenancy.

(a) When a family is selected, or when a participant family wants to move to another unit, the PHA issues a voucher to the family. The family may search for a unit.

(b) If the family finds a unit, and the owner is willing to lease the unit under the program, the family may request PHA approval of the tenancy. The PHA has the discretion whether to permit the family to submit more than one request at a time.

(c) The family must submit to the PHA a request for approval of the tenancy and a copy of the lease, including the HUD-prescribed tenancy addendum. The request must be submitted during the term of the voucher.

(d) The PHA specifies the procedure for requesting approval of the tenancy. The family must submit the request for approval of the tenancy in the form and manner required by the PHA.

[[64 FR 26644](#), May 14, 1999]

§ 982.303 Term of voucher.

(a) ***Initial term.*** The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher.

(b) ***Extensions of term.***

(1) At its discretion, the PHA may grant a family one or more extensions of the initial voucher term in accordance with PHA policy as described in the PHA administrative plan. Any extension of the term is granted by PHA notice to the family.

(2) If the family needs and requests an extension of the initial voucher term as a reasonable accommodation, in accordance with [part 8 of this title](#), to make the program accessible to a

family member who is a person with disabilities, the PHA must extend the voucher term up to the term reasonably required for that purpose.

(c) ***Suspension of term.*** The PHA must provide for suspension of the initial or any extended term of the voucher from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied.

(d) ***Progress report by family to the PHA.*** During the initial or any extended term of a voucher, the PHA may require the family to report progress in leasing a unit. Such reports may be required at such intervals or times as determined by the PHA.

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [63 FR 23860](#), Apr. 30, 1998; [64 FR 26644](#), May 14, 1999; [64 FR 56913](#), Oct. 21, 1999; [80 FR 50573](#), Aug. 20, 2015]

§ 982.304 Illegal discrimination: PHA assistance to family.

A family may claim that illegal discrimination because of race, color, religion, sex, national origin, age, familial status or disability prevents the family from finding or leasing a suitable unit with assistance under the program. The PHA must give the family information on how to fill out and file a housing discrimination complaint.

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995]

§ 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 all the following meet program requirements:

- (1) The unit is eligible;
- (2) The unit has been inspected by the PHA and passes HQS;
- (3) The lease includes the tenancy addendum;
- (4) The rent to owner is reasonable; and
- (5) At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share does not exceed 40 percent of the family's monthly adjusted income.

(b) *Actions before lease term.*

(1) All of the following must always be completed before the beginning of the initial term of the lease for a unit:

- (i) The PHA has inspected the unit and has determined that the unit satisfies the HQS;
- (ii) The landlord and the tenant have executed the lease (including the HUD-prescribed tenancy addendum, and the lead-based paint disclosure information as required in [§ 35.92\(b\) of this title](#)); and
- (iii) The PHA has approved leasing of the unit in accordance with program requirements.

(2)

(i) The PHA must inspect the unit, determine whether the unit satisfies the HQS, and notify the family and owner of the determination:

(A) In the case of a PHA with up to 1250 budgeted units in its tenant-based program, within fifteen days after the family and the owner submit a request for approval of the tenancy.

(B) In the case of a PHA with more than 1250 budgeted units in its tenant-based program, within a reasonable time after the family submits a request for approval of the tenancy. To the extent practicable, such inspection and determination must be completed within fifteen days after the family and the owner submit a request for approval of the tenancy.

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

(3) In the case of a unit subject to a lease-purchase agreement, the PHA must provide written notice to the family of the environmental requirements that must be met before commencing homeownership assistance for the family (see [§ 982.626\(c\)](#)).

(c) *When HAP contract is executed.*

(1) The PHA must use best efforts to execute the HAP contract before the beginning of the lease term. The HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

(2) The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed.

(3) If the HAP contract is executed during the period of 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.

(d) ***Notice to family and owner.*** After receiving the family's request for approval of the assisted tenancy, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

(e) ***Procedure after PHA approval.*** If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract.

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [64 FR 26644](#), May 14, 1999; [64 FR 56913](#), Oct. 21, 1999; [64 FR 59622](#), Nov. 3, 1999; [65 FR 16818](#), Mar. 30, 2000; [65 FR 55161](#), Sept. 12, 2000; [69 FR 34276](#), June 21, 2004; [80 FR 8246](#), Feb. 17, 2015]

§ 982.306 PHA disapproval of owner.

(a) The PHA must not approve an assisted tenancy if the PHA has been informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation under [2 CFR part 2424](#).

(b) When directed by HUD, the PHA must not approve an assisted tenancy if:

(1) The federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements, and such action is pending; or

(2) A court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements.

(c) In its administrative discretion, the PHA may deny approval of an assisted tenancy for any of the following reasons:

(1) The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act ([42 U.S.C. 1437f](#));

(2) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

(3) The owner has engaged in any drug-related criminal activity or any violent criminal activity;

(4) The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

(5) The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

(i) Threatens the right to peaceful enjoyment of the premises by other residents;

(ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;

(iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or

(iv) Is drug-related criminal activity or violent criminal activity; or

(6) The owner has a history or practice of renting units that fail to meet State or local housing codes; or

(7) The owner has not paid State or local real estate taxes, fines or assessments.

(d) The PHA must not approve a unit if the owner 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 for a family member who is a person with disabilities. This restriction against PHA approval of a unit only applies at the time a family initially receives tenant-based assistance for occupancy of a particular unit, but does not apply to PHA approval of a new tenancy with continued tenant-based assistance in the same unit.

(e) Nothing in this rule is intended to give any owner any right to participate in the program.

(f) For purposes of this section, “owner” includes a principal or other interested party.

[[60 FR 34695](#), July 3, 1995, as amended at [63 FR 27437](#), May 18, 1998; [64 FR 26644](#), May 14, 1999; [64 FR 56913](#), Oct. 21, 1999; [65 FR 16821](#), Mar. 30, 2000; [72 FR 73496](#), Dec. 27, 2007]

§ 982.307 Tenant screening.

(a) ***PHA option and owner responsibility.***

(1) The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy. The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(2) The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner.

(3) The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

- (i) Payment of rent and utility bills;
- (ii) Caring for a unit and premises;
- (iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;
- (iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and
- (v) Compliance with other essential conditions of tenancy.

(b) ***PHA information about tenant.***

(1) The PHA must give the owner:

- (i) The family's current and prior address (as shown in the PHA records); and
- (ii) The name and address (if known to the PHA) of the landlord at the family's current and prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug-trafficking by family members.

(3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information packet that is given to a family selected to participate in the program. The PHA policy must provide that the PHA will give the same types of information to all families and to all owners.

(4) In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

(Approved by the Office of Management and Budget under control number 2577-0169)

[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [61 FR 27163](#), May 30, 1996; [64 FR 26645](#), May 14, 1999; [64 FR 49658](#), Sept. 14, 1999; [73 FR 72344](#), Nov. 28, 2008; [75 FR 66263](#), Oct. 27, 2010; [81 FR 80816](#), Nov. 16, 2016]

§ 982.308 Lease and tenancy.

(a) ***Tenant's legal capacity.*** The tenant must have legal capacity to enter a lease under State and local law. “Legal capacity” means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) ***Form of lease.***

(1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form (plus the HUD-prescribed tenancy addendum). If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease (including the HUD-prescribed tenancy addendum). The HAP contract prescribed by HUD will contain the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

(c) ***State and local law.*** The PHA may review the lease to determine if the lease complies with State and local law. The PHA may decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law.

(d) ***Required information.*** The lease must specify all of the following:

(1) The names of the owner and the tenant;

(2) The unit rented (address, apartment number, and any other information needed to identify the contract unit);

(3) The term of the lease (initial term and any provisions for renewal);

(4) The amount of the monthly rent to owner; and

(5) A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

(e) ***Reasonable rent.*** The rent to owner must be reasonable (see [§ 982.507](#)).

(f) ***Tenancy addendum.***

(1) The HAP contract form required by HUD shall include an addendum (the “tenancy addendum”), that sets forth:

(i) The tenancy requirements for the program (in accordance with this section and [§§ 982.309](#) and [982.310](#)); and

(ii) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide).

(2) All provisions in the HUD-required tenancy addendum must be added word-for-word to the owner's standard form lease that is used by the owner for unassisted tenants. The tenant shall have the right to enforce the tenancy addendum against the owner, and the terms of the tenancy addendum shall prevail over any other provisions of the lease.

(g) *Changes in lease or rent.*

(1) If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of this section.

(2) In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(i) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(ii) If there are any changes in lease provisions governing the term of the lease;

(iii) If the family moves to a new unit, even if the unit is in the same building or complex.

(3) PHA approval of the tenancy, and execution of a new HAP contract, are not required for changes in the lease other than as specified in [paragraph \(g\)\(2\)](#) of this section.

(4) The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and any such changes shall be subject to rent reasonableness requirements (see [§ 982.503](#)).

[[64 FR 26645](#), May 14, 1999, as amended at [64 FR 56913](#), Oct. 21, 1999]

§ 982.309 Term of assisted tenancy.

(a) *Initial term of lease.*

(1) Except as provided in [paragraph \(a\)\(2\)](#) of this section, the initial lease term must be for at least one year.

(2) The PHA may approve a shorter initial lease term if the PHA determines that:

(i) Such shorter term would improve housing opportunities for the tenant; and

(ii) Such shorter term is the prevailing local market practice.

(3) During the initial term of the lease, the owner may not raise the rent to owner.

(4) The PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC.

(b) ***Term of HAP contract.***

(1) The term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

(2) The HAP contract terminates if any of the following occurs:

(i) The lease is terminated by the owner or the tenant;

(ii) The PHA terminates the HAP contract; or

(iii) The PHA terminates assistance for the family.

(c) ***Family responsibility.***

(1) If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice of termination at the same time. Failure to do this is a breach of family obligations under the program.

(2) The family must notify the PHA and the owner before the family moves out of the unit. Failure to do this is a breach of family obligations under the program.

[[64 FR 26645](#), May 14, 1999]

§ 982.310 Owner termination of tenancy.

(a) ***Grounds.*** During the term of the lease, the owner may not terminate the tenancy except on the following grounds:

(1) Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease;

(2) Violation of federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or

(3) Other good cause.

(b) ***Nonpayment by PHA: Not grounds for termination of tenancy.***

(1) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA.

(2) The PHA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease the owner may not terminate the tenancy of the family for nonpayment of the PHA housing assistance payment.

(c) ***Criminal activity*** -

(1) ***Evicting drug criminals due to drug crime on or near the premises.*** The lease must provide that drug-related criminal activity engaged in, on or near the premises by any tenant, household member, or guest, or such activity engaged in on the premises by any other person under the tenant's control, is grounds for the owner to terminate tenancy. In addition, the lease must provide that the owner may evict a family when the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) ***Evicting other criminals.***

(i) ***Threat to other residents.*** The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);

(B) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or

(C) Any violent criminal activity on or near the premises by a tenant, household member, or guest, or any such activity on the premises by any other person under the tenant's control.

(ii) ***Fugitive felon or parole violator.*** The lease must provide that the owner may terminate the tenancy if a tenant is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) ***Evidence of criminal activity.*** The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person in accordance with this section if the owner determines that the covered person has engaged in the criminal activity, regardless of

whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. (See part 5, subpart J, of this title for provisions concerning access to criminal records.)

(d) ***Other good cause.***

(1) “Other good cause” for termination of tenancy by the owner may include, but is not limited to, any of the following examples:

- (i) Failure by the family to accept the offer of a new lease or revision;
- (ii) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;
- (iii) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- (iv) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

(2) During the initial lease term, the owner may not terminate the tenancy for “other good cause”, unless the owner is terminating the tenancy because of something the family did or failed to do. For example, during this period, the owner may not terminate the tenancy for “other good cause” based on any of the following grounds: failure by the family to accept the offer of a new lease or revision; the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy (see [paragraph \(d\)\(1\)\(iv\)](#) of this section).

(e) ***Owner notice -***

(1) ***Notice of grounds.***

- (i) The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.
- (ii) The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

(2) ***Eviction notice.***

- (i) Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.
- (ii) The owner must give the PHA a copy of any owner eviction notice to the tenant.

(f) ***Eviction by court action.*** The owner may only evict the tenant from the unit by instituting a court action.

(g) ***Regulations not applicable.*** [24 CFR part 247](#) (concerning evictions from certain subsidized and HUD-owned projects) does not apply to a tenancy assisted under this part 982.

(h) ***Termination of tenancy decisions -***

(1) ***General.*** If the law and regulation permit the owner to take an action but do not require action to be taken, the owner may take or not take the action in accordance with the owner's standards for eviction. The owner may consider all of the circumstances relevant to a particular eviction case, such as:

(i) The seriousness of the offending action;

(ii) The effect on the community of denial or termination or the failure of the owner to take such action;

(iii) The extent of participation by the leaseholder in the offending action;

(iv) The effect of denial of admission or termination of tenancy on household members not involved in the offending activity;

(v) The demand for assisted housing by families who will adhere to lease responsibilities;

(vi) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;

(vii) The effect of the owner's action on the integrity of the program.

(2) ***Exclusion of culpable household member.*** The owner may require a tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

(3) ***Consideration of rehabilitation.*** In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully ([42 U.S.C. 13661](#)). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(4) ***Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking.*** The owner's termination of tenancy actions must be

consistent with the fair housing and equal opportunity provisions of [24 CFR 5.105](#), and with the provisions for protection of victims of domestic violence, dating violence, sexual assault, or stalking in [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [64 FR 26645](#), May 14, 1999; [64 FR 56913](#), Oct. 21, 1999; [66 FR 28804](#), May 24, 2001; [73 FR 72344](#), Nov. 28, 2008; [75 FR 66263](#), Oct. 27, 2010; [81 FR 80816](#), Nov. 16, 2016]

§ 982.311 When assistance is paid.

(a) ***Payments under HAP contract.*** Housing assistance payments are paid to the owner in accordance with the terms of the HAP contract. Housing assistance payments may only be paid to the owner during the lease term, and while the family is residing in the unit.

(b) ***Termination of payment: When owner terminates the lease.*** Housing assistance payments terminate when the lease is terminated by the owner in accordance with the lease. However, if the owner has commenced the process to evict the tenant, and if the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner in accordance with the HAP contract until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The PHA may continue such payments until the family moves from or is evicted from the unit.

(c) ***Termination of payment: Other reasons for termination.*** Housing assistance payments terminate if:

- (1) The lease terminates;
- (2) The HAP contract terminates; or
- (3) The PHA terminates assistance for the family.

(d) ***Family move-out.***

(1) If the family moves out of the unit, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

(2) If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

§ 982.312 Absence from unit.

(a) The family may be absent from the unit for brief periods. For longer absences, the PHA administrative plan establishes the PHA policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days in any circumstance, or for any reason. At its discretion, the PHA may allow absence for a lesser period in accordance with PHA policy.

(b) Housing assistance payments terminate if the family is absent for longer than the maximum period permitted. The term of the HAP contract and assisted lease also terminate.

(The owner must reimburse the PHA for any housing assistance payment for the period after the termination.)

(c) Absence means that no member of the family is residing in the unit.

(d)

(1) The family must supply any information or certification requested by the PHA to verify that the family is residing in the unit, or relating to family absence from the unit. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit, including any information requested on the purposes of family absences.

(2) The PHA may adopt appropriate techniques to verify family occupancy or absence, including letters to the family at the unit, phone calls, visits or questions to the landlord or neighbors.

(e) The PHA administrative plan must state the PHA policies on family absence from the dwelling unit. The PHA absence policy includes:

(1) How the PHA determines whether or when the family may be absent, and for how long. For example, the PHA may establish policies on absences because of vacation, hospitalization or imprisonment; and

(2) Any provision for resumption of assistance after an absence, including readmission or resumption of assistance to the family.

§ 982.313 Security deposit: Amounts owed by tenant.

(a) The owner may collect a security deposit from the tenant.

(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) When the tenant moves out of the dwelling unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid rent payable by the tenant, damages to the unit or for other amounts the tenant owes under the lease.

(d) 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, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the tenant.

(e) 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.

§ 982.315 Family break-up.

(a)

(1) The PHA has discretion to determine which members of an assisted family continue to receive assistance in the program if the family breaks up. The PHA administrative plan must state PHA policies on how to decide who remains in the program if the family breaks up.

(2) If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), the PHA must ensure that the victim retains assistance.

(b) The factors to be considered in making this decision under the PHA policy may include:

(1) Whether the assistance should remain with family members remaining in the original assisted unit.

(2) The interest of minor children or of ill, elderly, or disabled family members.

(3) Whether family members are forced to leave the unit as a result of actual or threatened domestic violence, dating violence, sexual assault, or stalking.

(4) Whether any of the family members are receiving protection as victims of domestic violence, dating violence, sexual assault, or stalking, as provided in [24 CFR part 5, subpart L](#), and whether the abuser is still in the household.

(5) Other factors specified by the PHA.

(c) If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement or judicial decree, the PHA is bound by the court's determination of which family members continue to receive assistance in the program.

[[60 FR 34695](#), July 3, 1995, as amended at [75 FR 66264](#), Oct. 27, 2010; [80 FR 8246](#), Feb. 17, 2015; [81 FR 80816](#), Nov. 16, 2016]

§ 982.316 Live-in aide.

(a) A family that consists of one or more elderly, near-elderly or disabled persons may request that the PHA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with [24 CFR part 8](#) to make the program accessible to and usable by the family member with a disability. (See [§ 982.402\(b\)\(6\)](#) concerning effect of live-in aide on family unit size.)

(b) At any time, the PHA may refuse to approve a particular person as a live-in aide, or may withdraw such approval, if:

- (1) The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- (2) The person commits drug-related criminal activity or violent criminal activity; or
- (3) The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

[[63 FR 23860](#), Apr. 30, 1998; [63 FR 31625](#), June 10, 1998]

§ 982.317 Lease-purchase agreements.

(a) A family leasing a unit with assistance under the program may enter into an agreement with an owner to purchase the unit. So long as the family is receiving such rental assistance, all requirements applicable to families otherwise leasing units under the tenant-based program apply. Any homeownership premium (e.g., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a downpayment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family.

(b) In determining whether the rent to owner for a unit subject to a lease-purchase agreement is a reasonable amount in accordance with [§ 982.503](#), any homeownership premium paid by the family to the owner must be excluded when the PHA determines rent reasonableness.

Subpart H - Where Family Can Live and Move

Source: [60 FR 34695](#), July 3, 1995, unless otherwise noted.

§ 982.351 Overview.

This subpart describes what kind of housing is eligible for leasing, and the areas where a family can live with tenant-based assistance. The subpart covers:

- (a) Assistance for a family that rents a dwelling unit in the jurisdiction of the PHA that originally selected the family for tenant-based assistance.
- (b) “Portability” assistance for a family PHA rents a unit outside the jurisdiction of the initial PHA.

§ 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;
- (6) A unit occupied by its owner or by a person with any interest in the unit.
- (7) For provisions on PHA disapproval of an owner, see [§ 982.306](#).

(b) ***PHA-owned housing.***

(1) A unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA) may only be assisted under the tenant-based program 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, and a PHA-owned unit is freely selected by the family, without PHA pressure or steering.

(ii) The unit is not ineligible housing.

(iii) During assisted occupancy, the family may not benefit from any form of housing subsidy that is prohibited under [paragraph \(c\)](#) of this section.

(iv)

(A) The PHA must obtain the services of an independent entity to perform the following PHA functions as required under the program rule:

(1) To determine rent reasonableness in accordance with [§ 982.507](#). The independent agency shall communicate the rent reasonableness determination to the family and the PHA.

(2) To assist the family negotiate the rent to owner in accordance with [§ 982.506](#).

(3) To inspect the unit for compliance with the HQS in accordance with [§ 982.305\(a\)](#) and [§ 982.405](#) (except that [§ 982.405\(e\)](#) is not applicable). The independent agency shall communicate the results of each such inspection to the family and the PHA.

(B) The independent agency used to perform these functions must be approved by HUD. The independent agency may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government), or may be another HUD-approved independent agency.

(C) The PHA may compensate the independent agency from PHA ongoing administrative fee income for the services performed by the independent agency. The PHA may not use other program receipts to compensate the independent agency for such services. The PHA and the independent agency may not charge the family any fee or charge for the services provided by the independent agency.

(c) ***Prohibition against other housing subsidy.*** A family may not receive the benefit of tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

(1) Public or Indian housing assistance;

(2) Other Section 8 assistance (including other tenant-based assistance);

(3) Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

(4) Section 101 rent supplements;

(5) Section 236 rental assistance payments;

- (6) Tenant-based assistance under the HOME Program;
- (7) Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- (8) Any local or State rent subsidy;
- (9) Section 202 supportive housing for the elderly;
- (10) Section 811 supportive housing for persons with disabilities;
- (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance);
or
- (12) Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, “housing subsidy” does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [63 FR 23860](#), Apr. 30, 1998; [64 FR 13057](#), Mar. 16, 1999; [64 FR 26645](#), May 14, 1999; [65 FR 55162](#), Sept. 12, 2000]

§ 982.353 Where family can lease a unit with tenant-based assistance.

(a) ***Assistance in the initial PHA jurisdiction.*** The family may receive tenant-based assistance to lease a unit located anywhere in the jurisdiction (as determined by State and local law) of the initial PHA. HUD may nevertheless restrict the family's right to lease such a unit anywhere in such jurisdiction if HUD determines that limitations on a family's opportunity to select among available units in that jurisdiction are appropriate to achieve desegregation goals in accordance with obligations generated by a court order or consent decree.

(b) ***Portability: Assistance outside the initial PHA jurisdiction.*** Subject to [paragraph \(c\)](#) of this section, and to [§ 982.552](#) and [§ 982.553](#), a voucher-holder or participant family has the right to receive tenant-based voucher assistance, in accordance with requirements of this part, to lease a unit outside the initial PHA jurisdiction, anywhere in the United States, in the jurisdiction of a PHA with a tenant-based program under this part. The initial PHA must not provide such portable assistance for a participant if the family has moved out of the assisted unit in violation of the lease except as provided for in this subsection. If the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes him- or herself to be threatened with imminent harm from further violence by remaining in the dwelling unit (or any family member has been the victim of a sexual

assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move), and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial PHA and move to another jurisdiction under the Housing Choice Voucher Program.

(c) ***Nonresident applicants.***

(1) This [paragraph \(c\)](#) applies if neither the household head nor spouse of an assisted family already had a “domicile” (legal residence) in the jurisdiction of the initial PHA at the time when the family first submitted an application for participation in the program to the initial PHA.

(2) The following apply during the 12 month period from the time when a family described in [paragraph \(c\)\(1\)](#) of this section is admitted to the program:

(i) The family may lease a unit anywhere in the jurisdiction of the initial PHA;

(ii) The family does not have any right to portability;

(iii) The initial PHA may choose to allow portability during this period.

(3) If the initial PHA approves, the family may lease a unit outside the PHA jurisdiction under portability procedures.

(4) [Paragraph \(c\)](#) of this section does not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

(d) ***Income eligibility.***

(1) For admission to the program, a family must be income eligible in the area where the family initially leases a unit with assistance under the program.

(2) If a family is a participant in the initial PHA's voucher program, income eligibility is not redetermined when the family moves to the receiving PHA program under portability procedures.

(e) ***Freedom of choice.*** The PHA may not directly or indirectly reduce the family's opportunity to select among available units, except as provided in [paragraph \(a\)](#) of this section, or elsewhere in this part 982 (e.g., prohibition on the use of ineligible housing, housing not meeting HQS, or housing for which the rent to owner exceeds a reasonable rent). However, the PHA must provide families the information required in [§ 982.301](#) for both the oral briefing and

the information packet to ensure that they have the information they need to make an informed decision on their housing choice.

[[60 FR 34695](#), July 3, 1995, as amended at [61 FR 27163](#), May 30, 1996; [61 FR 42131](#), Aug. 13, 1996; [64 FR 26646](#), May 14, 1999; [73 FR 72344](#), Nov. 28, 2008; [75 FR 66264](#), Oct. 27, 2010; [80 FR 50573](#), Aug. 20, 2015; [81 FR 80816](#), Nov. 16, 2016]

§ 982.354 Move with continued tenant-based assistance.

(a) ***Applicability.*** This section states when a participant family may move to a new unit with continued tenant-based assistance:

(b) ***When family may move.*** A family may move to a new unit if:

(1) The assisted lease for the old unit has terminated. This includes a termination because:

(i) The PHA has terminated the HAP contract for the owner's breach; or

(ii) The lease has terminated by mutual agreement of the owner and the tenant.

(2) The owner has given the tenant a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the tenant.

(3) The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach, or otherwise).

(4) The family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit.

(c) ***How many moves.***

(1) A participant family may move with continued assistance under the program, either inside the PHA jurisdiction, or under the portability procedures (See [§ 982.353](#)) in accordance with the PHA's policies.

(2) Consistent with applicable civil rights laws and regulations, the PHA may establish policies that:

(i) Prohibit any move by the family during the initial lease term;

(ii) Prohibit more than one move by the family during any one-year period; and

(iii) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in [24 CFR part 5, subpart L](#), and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

(d) ***Notice that family wants to move.*** If the family wants to move to a new unit, the family must notify the PHA and the owner before moving from the old unit. If the family wants to move to a new unit that is located outside the initial PHA jurisdiction, the notice to the initial PHA must specify the area where the family wants to move. See portability procedures in [subpart H of this part](#).

(e) ***When the PHA may deny permission to move.***

(1) The PHA may deny permission to move if the PHA does not have sufficient funding for continued assistance. The PHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves to a higher-cost unit based on insufficient funding.

(2) At any time, the PHA may deny permission to move in accordance with [§ 982.552](#) (grounds for denial or termination of assistance).

[[60 FR 34695](#), July 3, 1995, as amended at [64 FR 56913](#), Oct. 21, 1999; [75 FR 66263](#), Oct. 27, 2010. Redesignated and amended at [80 FR 50573](#), Aug. 20, 2015; [81 FR 80817](#), Nov. 16, 2016]

§ 982.355 Portability: Administration by initial and receiving PHA.

(a) ***General.*** When a family moves under portability (in accordance with [§ 982.353\(b\)](#)) to an area outside the initial PHA jurisdiction, the receiving PHA must administer assistance for the family if a PHA with a HCV program has jurisdiction in the area where the unit is located.

(b) ***Requirement to administer assistance.*** A receiving PHA cannot refuse to assist incoming portable families or direct them to another neighboring PHA for assistance. If there is more than one such PHA, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected as the receiving PHA. In cases where the family prefers not to select the receiving PHA, the initial PHA selects the receiving PHA on behalf of the family. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families.

(c) ***Portability procedures.*** The following portability procedures must be followed:

(1) When the family decides to use the voucher outside of the PHA jurisdiction, the family must notify the initial PHA of its desire to relocate and must specify the location where it wants to live.

(2) The initial PHA must determine the family's eligibility to move in accordance with [§§ 982.353](#) and [982.354](#).

(3) Once the receiving PHA is determined in accordance with [paragraph \(b\)](#) of this section, the initial PHA must contact the receiving PHA, via email or other confirmed delivery method, prior to approving the family's request to move in order to determine whether the voucher will be absorbed or billed by the receiving PHA. The receiving PHA must advise the initial PHA in writing, via email or other confirmed delivery method, of its decision.

(4) If the receiving PHA notifies the initial PHA that it will absorb the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA.

(5) If the receiving PHA will bill the initial PHA for the portability voucher and the cost of the HAP will increase due to the move, the initial PHA may deny the move if it does not have sufficient funding for continued assistance in accordance with [§ 982.354 \(e\)\(1\)](#).

(6) If a billing arrangement is approved by the initial PHA or if the voucher is to be absorbed by the receiving PHA, the initial PHA must issue the family a voucher to move, if it has not already done so, and advise the family how to contact and request assistance from the receiving PHA.

(7) The initial PHA must promptly notify the receiving PHA to expect the family. The initial PHA must give the receiving PHA the form HUD-52665, the most recent form HUD 50058 (Family Report) for the family, and all related verification information.

(8) The family must promptly contact the receiving PHA in order to be informed of the receiving PHA's procedures for incoming portable families and comply with these procedures. The family's failure to comply may result in denial or termination of the receiving PHA's voucher.

(9) The receiving PHA does not redetermine eligibility for a participant family. However, for a family that was not already receiving assistance in the PHA's HCV program, the initial PHA must determine whether the family is eligible for admission to the receiving PHA's HCV program. In determining income eligibility, the receiving PHA's income limits are used by the initial PHA.

(10) When a receiving PHA assists a family under portability, administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used.

(11) If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit.

(12) The receiving PHA must determine the family unit size for the family, and base its determination on the subsidy standards of the receiving PHA.

(13) The receiving PHA must issue a voucher to the family. The term of the receiving PHA voucher may not expire before 30 calendar days from the expiration date of the initial PHA voucher. If the voucher expires before the family arrives at the receiving PHA, the receiving PHA must contact the initial PHA to determine if it will extend the voucher.

(14) Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must notify the initial PHA of any extensions granted to the term of the voucher.

(15) The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA voucher. As required in [§ 982.303](#), if the family submits a request for tenancy approval during the term of the voucher, the PHA must suspend the term of that voucher.

(16) The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program, or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the voucher.

(17) At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with [§ 982.552](#) and [982.553](#).

(d) *Absorption by the receiving PHA.*

(1) If funding is available under the consolidated ACC for the receiving PHA's HCV program, the receiving PHA may absorb the family into the receiving PHA's HCV program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving PHA's HCV program.

(2) HUD may require that the receiving PHA absorb all, or a portion of, incoming portable families. Under circumstances described in a notice published in the Federal Register, HUD may determine that receiving PHAs, or categories of receiving PHAs, should absorb all or a portion of incoming portable families. If HUD makes such a determination, HUD will provide an opportunity for public comment, for a period of no less than 60 calendar days, on such policy and procedures. After consideration of public comments, HUD will publish a final notice in the Federal Register advising PHAs and the public of HUD's final determination on the subject of mandatory absorption of incoming portable families.

(3) HUD may provide financial or nonfinancial incentives (or both) to PHAs that absorb portability vouchers.

(e) ***Portability billing.***

(1) To cover assistance for a portable family that was not absorbed in accordance with [paragraph \(d\)](#) of this section, the receiving PHA may bill the initial PHA for housing assistance payments and administrative fees.

(2) The initial PHA must promptly reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA for the portable family. The amount of the housing assistance payment for a portable family in the receiving PHA program is determined in the same manner as for other families in the receiving PHA program.

(3) The initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under HAP contract on the first day of the month for which the receiving PHA is billing the initial PHA under this section. If administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill under this section (e.g., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's prorated ongoing administrative fee). If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

(4) When a portable family moves out of the HCV program of a receiving PHA that has not absorbed the family, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA, and the first receiving PHA is no longer required to provide assistance for the family.

(5) In administration of portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial and receiving PHA must also comply with billing and payment deadlines under the financial procedures.

(6) A PHA must manage the PHA HCV program in a manner that ensures that the PHA has the financial ability to provide assistance for families that move out of the PHA's program

under the portability procedures, and that have not been absorbed by the receiving PHA, as well as for families that remain in the PHA's program.

(7) HUD may reduce the administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements.

(f) ***Portability funding.***

(1) HUD may transfer units and funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC.

(2) HUD may provide additional funding (e.g., funds for incremental units) to the initial PHA for funds transferred to a receiving PHA for portability purposes.

(3) HUD may provide additional funding (e.g., funds for incremental units) to the receiving PHA for absorption of portable families.

(4) HUD may require the receiving PHA to absorb portable families.

(g) ***Special purpose vouchers.***

(1) The initial PHA must submit the codes used for special purpose vouchers on the form HUD-50058, Family Report, and the receiving PHA must maintain the codes on the Family Report, as long as the Receiving PHA chooses to bill the initial PHA.

(2) Initial and receiving PHAs must administer special purpose vouchers, such as the HUD-Veterans Affairs Supportive Housing vouchers, in accordance with HUD-established policy in cases where HUD has established alternative program requirements of such special purpose vouchers.

Subpart I - Dwelling Unit: Housing Quality Standards, Subsidy Standards, Inspection and Maintenance

Source: [60 FR 34695](#), July 3, 1995, unless otherwise noted.

§ 982.401 Housing quality standards (HQS).

(a) ***Performance and acceptability requirements.***

(1) This section states the housing quality standards (HQS) for housing assisted under the HCV program.

(2)

(i) The HQS consist of:

(A) Performance requirements; and

(B) Acceptability criteria or HUD approved variations in the acceptability criteria.

(ii) This section states performance and acceptability criteria for these key aspects of housing quality:

(A) Sanitary facilities;

(B) Food preparation and refuse disposal;

(C) Space and security;

(D) Thermal environment;

(E) Illumination and electricity;

(F) Structure and materials;

(G) Interior air quality;

(H) Water supply;

(I) Lead-based paint;

(J) Access;

(K) Site and neighborhood;

(L) Sanitary condition; and

(M) Smoke detectors.

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

(4)

(i) In addition to meeting HQS performance requirements, the housing must meet the acceptability criteria stated in this section, unless variations are approved by HUD.

(ii) HUD may approve acceptability criteria variations for the following purposes:

(A) Variations which apply standards in local housing codes or other codes adopted by the PHA; or

(B) Variations because of local climatic or geographic conditions.

(iii) Acceptability criteria variations may only be approved by HUD pursuant to [paragraph \(a\)\(4\)\(ii\)](#) of this section if such variations either:

(A) Meet or exceed the performance requirements; or

(B) Significantly expand affordable housing opportunities for families assisted under the program.

(iv) HUD will not approve any acceptability criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

(b) ***Sanitary facilities*** -

(1) ***Performance requirements.*** The dwelling unit must include sanitary facilities located in the unit. The sanitary facilities must be in proper operating condition, and adequate for personal cleanliness and the disposal of human waste. The sanitary facilities must be usable in privacy.

(2) ***Acceptability criteria.***

(i) The bathroom must be located in a separate private room and have a flush toilet in proper operating condition.

(ii) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water.

(iii) The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water.

(iv) The facilities must utilize an approvable public or private disposal system (including a locally approvable septic system).

(c) ***Food preparation and refuse disposal*** -

(1) ***Performance requirement.***

(i) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner.

(ii) There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) ***Acceptability criteria.***

(i) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A microwave oven may be substituted for a tenant-supplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and microwave ovens are furnished instead of an oven and stove or range to both subsidized and unsubsidized tenants in the building or premises.

(ii) The dwelling unit must have a kitchen sink in proper operating condition, with a sink trap and hot and cold running water. The sink must drain into an approvable public or private system.

(iii) The dwelling unit must have space for the storage, preparation, and serving of food.

(iv) There must be facilities and services for the sanitary disposal of food waste and refuse, including temporary storage facilities where necessary (e.g., garbage cans).

(d) ***Space and security -***

(1) ***Performance requirement.*** The dwelling unit must provide adequate space and security for the family.

(2) ***Acceptability criteria.***

(i) At a minimum, the dwelling unit must have a living room, a kitchen area, and a bathroom.

(ii) The dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(iii) Dwelling unit windows that are accessible from the outside, such as basement, first floor, and fire escape windows, must be lockable (such as window units with sash pins or sash locks, and combination windows with latches). Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

(iv) The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.

(e) ***Thermal environment -***

(1) ***Performance requirement.*** The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.

(2) ***Acceptability criteria.***

(i) There must be a safe system for heating the dwelling unit (and a safe cooling system, where present). The system must be in proper operating condition. The system must be able to provide adequate heat (and cooling, if applicable), either directly or indirectly, to each room, in order to assure a healthy living environment appropriate to the climate.

(ii) The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Electric heaters are acceptable.

(f) ***Illumination and electricity*** -

(1) ***Performance requirement.*** Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. The electrical fixtures and wiring must ensure safety from fire.

(2) ***Acceptability criteria.***

(i) There must be at least one window in the living room and in each sleeping room.

(ii) The kitchen area and the bathroom must have a permanent ceiling or wall light fixture in proper operating condition. The kitchen area must also have at least one electrical outlet in proper operating condition.

(iii) The living room and each bedroom must have at least two electrical outlets in proper operating condition. Permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets.

(g) ***Structure and materials*** -

(1) ***Performance requirement.*** The dwelling unit must be structurally sound. The structure must not present any threat to the health and safety of the occupants and must protect the occupants from the environment.

(2) ***Acceptability criteria.***

(i) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling, missing parts, or other serious damage.

(ii) The roof must be structurally sound and weathertight.

(iii) The exterior wall structure and surface must not have any serious defects such as serious leaning, buckling, sagging, large holes, or defects that may result in air infiltration or vermin infestation.

(iv) The condition and equipment of interior and exterior stairs, halls, porches, walkways, etc., must not present a danger of tripping and falling. For example, broken or missing steps or loose boards are unacceptable.

(v) Elevators must be working and safe.

(h) ***Interior air quality*** -

(1) ***Performance requirement.*** The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.

(2) ***Acceptability criteria.***

(i) The dwelling unit must be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful pollutants.

(ii) There must be adequate air circulation in the dwelling unit.

(iii) Bathroom areas must have one openable window or other adequate exhaust ventilation.

(iv) Any room used for sleeping must have at least one window. If the window is designed to be openable, the window must work.

(i) ***Water supply*** -

(1) ***Performance requirement.*** The water supply must be free from contamination.

(2) ***Acceptability criteria.*** The dwelling unit must be served by an approvable public or private water supply that is sanitary and free from contamination.

(j) ***Lead-based paint performance requirement.*** 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 part 35, subparts A, B, M, and R of this title apply to units assisted under this part.

(k) ***Access performance requirement.*** The dwelling unit must be able to be used and maintained without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire (such as fire stairs or egress through windows).

(l) ***Site and Neighborhood*** -

(1) ***Performance requirement.*** The site and neighborhood must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.

(2) ***Acceptability criteria.*** The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(m) ***Sanitary condition -***

(1) ***Performance requirement.*** The dwelling unit and its equipment must be in sanitary condition.

(2) ***Acceptability criteria.*** The dwelling unit and its equipment must be free of vermin and rodent infestation.

(n) ***Smoke detectors performance requirement -***

(1) Except as provided in [paragraph \(n\)\(2\)](#) of this section, each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of the dwelling unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system, designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).

(2) For units assisted prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors prior to April 24, 1993 in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992, ([57 FR 33846](#)), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit).

[[60 FR 34695](#), July 3, 1995, as amended at [61 FR 27163](#), May 30, 1996; [63 FR 23861](#), Apr. 30, 1998; [64 FR 26646](#), May 14, 1999; [64 FR 49658](#), Sept. 14, 1999; [64 FR 50230](#), Sept. 15, 1999; [80 FR 8246](#), Feb. 17, 2015]

§ 982.402 Subsidy standards.

(a) ***Purpose.***

(1) The PHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions.

(2) For each family, the PHA determines the appropriate number of bedrooms under the PHA subsidy standards (family unit size).

(3) The family unit size number is entered on the voucher issued to the family. The PHA issues the family a voucher for the family unit size when a family is selected for participation in the program.

(b) ***Determining family unit size.*** The following requirements apply when the PHA determines family unit size under the PHA subsidy standards:

(1) The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.

(2) The subsidy standards must be consistent with space requirements under the housing quality standards (See [§ 982.401\(d\)](#)).

(3) The subsidy standards must be applied consistently for all families of like size and composition.

(4) A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.

(5) A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.

(6) Any live-in aide (approved by the PHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;

(7) Unless a live-in-aide resides with the family, the family unit size for any family consisting of a single person must be either a zero or one-bedroom unit, as determined under the PHA subsidy standards.

(8) In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances. (For a single person other than a disabled or elderly person or remaining family member, such PHA exception may not override the limitation in [paragraph \(b\)\(7\)](#) of this section.)

(c) ***Effect of family unit size-maximum subsidy in voucher program.*** The family unit size as determined for a family under the PHA subsidy standard is used to determine the maximum rent subsidy for a family assisted in the voucher program. For a voucher tenancy, the PHA establishes payment standards by number of bedrooms. The payment standard for a family shall be the lower of:

(1) The payment standard amount for the family unit size; or

(2) The payment standard amount for the unit size of the unit rented by the family.

(3) ***Voucher program.*** For a voucher tenancy, the PHA establishes payment standards by number of bedrooms. The payment standards for the family must be the lower of:

- (i) The payment standards for the family unit size; or
- (ii) The payment standard for the unit size rented by the family.

(d) ***Size of unit occupied by family.***

- (1) The family may lease an otherwise acceptable dwelling unit with fewer bedrooms than the family unit size. However, the dwelling unit must meet the applicable HQS space requirements.
- (2) The family may lease an otherwise acceptable dwelling unit with more bedrooms than the family unit size. However, utility allowances must follow [§ 982.517\(d\)](#).

[[60 FR 34695](#), July 3, 1995, as amended at [63 FR 23861](#), Apr. 30, 1998; [64 FR 26646](#), May 14, 1999; [81 FR 12375](#), Mar. 8, 2016]

§ 982.403 Terminating HAP contract when unit is too small.

(a) ***Violation of HQS space standards.***

- (1) If the PHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible.
- (2) If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

(b) ***Termination.*** When the PHA terminates the HAP contract under [paragraph \(a\)](#) of this section:

- (1) The PHA must notify the family and the owner of the termination; and
- (2) The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives such notice to the owner.
- (3) The family may move to a new unit in accordance with [§ 982.354](#).

(Approved by the Office of Management and Budget under control number 2577-0169)

[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [64 FR 26647](#), May 14, 1999; [80 FR 8246](#), Feb. 17, 2015; [80 FR 50575](#), Aug. 20, 2015]

§ 982.404 Maintenance: Owner and family responsibility: PHA remedies.

(a) *Owner obligation.*

- (1) The owner must maintain the unit in accordance with HQS.
- (2) If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take prompt and vigorous action to enforce the owner obligations. PHA remedies for such breach of the HQS include termination, suspension or reduction of housing assistance payments and termination of the HAP contract.
- (3) The PHA must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect 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).
- (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 (as provided in [§ 982.404\(b\)](#) and [§ 982.551\(c\)](#)). (However, the PHA may terminate assistance to a family because of HQS breach caused by the family.)

(b) *Family obligation.*

- (1) The family is responsible for a breach of the HQS that is caused by any of the following:
 - (i) The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the tenant;
 - (ii) The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant; or
 - (iii) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).
- (2) If an HQS breach caused by the family is life threatening, the family must correct the defect within no more than 24 hours. For other family-caused defects, the family must correct the defect within no more than 30 calendar days (or any PHA-approved extension).
- (3) If the family has caused a breach of the HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with [§ 982.552](#).

(Approved by the Office of Management and Budget under control number 2577-0169)

[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995]

§ 982.405 PHA initial and periodic unit inspection.

- (a) The PHA must inspect the unit leased to a family prior to the initial term of the lease, at least biennially during assisted occupancy, and at other times as needed, to determine if the unit meets the HQS. (See [§ 982.305\(b\)\(2\)](#) concerning timing of initial inspection by the PHA.)
- (b) The PHA must conduct supervisory quality control HQS inspections.
- (c) In scheduling inspections, the PHA must consider complaints and any other information brought to the attention of the PHA.
- (d) The PHA must notify the owner of defects shown by the inspection.
- (e) The PHA may not charge the family for an initial inspection or reinspection of the unit.
- (f) 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 will be included in a PHA's administrative fee reserve and may be used only for activities related to the provision of Section 8 Tenant-Based Rental Assistance.
- (g) If a participant family or government official reports a condition that is life-threatening (*i.e.*, the PHA would require the owner to make the repair within no more than 24 hours in accordance with [§ 982.404\(a\)\(3\)](#)), then the PHA must inspect the housing unit within 24 hours of when the PHA received the notification. If the reported condition is not life-threatening (*i.e.*, the PHA would require the owner to make the repair within no more than 30 calendar days in accordance with [§ 982.404\(a\)\(3\)](#)), then the PHA must inspect the unit within 15 days of when the PHA received the notification. 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.

[[60 FR 34695](#), July 3, 1995, as amended at [64 FR 26647](#), May 14, 1999; [64 FR 56914](#), Oct. 21, 1999; [81 FR 12375](#), Mar. 8, 2016]

§ 982.406 Use of alternative inspections.

- (a) *In general.*

(1) A PHA may comply with the inspection requirement in [§ 982.405\(a\)](#) by relying on an alternative inspection (*i.e.*, an inspection conducted for another housing assistance program) only if the PHA is able to obtain the results of the alternative inspection.

(2) If an alternative inspection method employs sampling, then a PHA may rely on such alternative inspection method to comply with the requirement 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\(g\)](#).

(b) ***Administrative plans.*** A PHA relying on an alternative inspection to fulfill the requirement in [§ 982.405\(a\)](#) must identify the alternative inspection method being used in the PHA's administrative plan. Such a change may be a significant amendment to the plan, in which case the PHA must follow its plan amendment and public notice requirements, in addition to meeting the requirements in [§ 982.406\(c\)\(2\)](#), if applicable, before using the alternative inspection method.

(c) ***Eligible inspection methods.***

(1) A PHA may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs), or inspections performed by HUD, with no action other than amending its administrative plan.

(2) If a PHA wishes to rely on an inspection method other than a method listed in [paragraph \(c\)\(1\)](#) of this section, then, prior to amending its administrative plan, the PHA must submit to the Real Estate Assessment Center (REAC) a copy of the inspection method it wishes to use, along with its analysis of the inspection method that shows that the method “provides the same or greater protection to occupants of dwelling units” as would HQS.

(i) A PHA may rely upon such alternative inspection method only upon receiving approval from REAC to do so.

(ii) A PHA that uses an alternative inspection method approved under this paragraph must monitor changes to the standards and requirements applicable to such method. If any change is made to the alternative inspection method, then the PHA must submit to REAC a copy of the revised standards and requirements, along with a revised comparison to HQS. If the PHA or REAC determines that the revision would cause the alternative inspection to no longer meet or exceed HQS, then the PHA may no longer rely upon the alternative inspection method to comply with the inspection requirement at [§ 982.405\(a\)](#).

(d) ***Results of alternative inspection.***

(1) In order for a PHA to rely upon the results of an alternative inspection to comply with the requirement at [§ 982.405\(a\)](#), a property inspected pursuant to such method must meet the

standards or requirements regarding housing quality or safety applicable to properties assisted under the program using the alternative inspection method. To make the determination of whether such standards or requirements are met, the PHA must adhere to the following procedures:

(i) If a property is inspected under an alternative inspection method, and the property receives a “pass” score, then the PHA may rely on that inspection to demonstrate compliance with the inspection requirement at [§ 982.405\(a\)](#).

(ii) If a property is inspected under an alternative inspection method, and the property receives a “fail” score, then the PHA may not rely on that inspection to demonstrate compliance with the inspection requirement at [§ 982.405\(a\)](#).

(iii) If a property is inspected under an alternative inspection method that does not employ a pass/fail determination - for example, in the case of a program where deficiencies are simply identified - then the PHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a “fail” score under HQS. If no such deficiency exists, then the PHA may rely on the inspection to demonstrate compliance with the inspection requirement at [§ 982.405\(a\)](#); if such a deficiency does exist, then the PHA may not rely on the inspection to demonstrate such compliance.

(2) Under any circumstance described above in which a PHA is prohibited from relying on an alternative inspection method for a property, the PHA must, within a reasonable period of time, conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any identified deficiencies.

(e) **Records retention.** As with all other inspection reports, and as required by [§ 982.158\(f\)\(4\)](#), reports for inspections conducted pursuant to an alternative inspection method must be obtained by the PHA. Such reports must be available for HUD inspection for at least three years from the date of the latest inspection.

[[81 FR 12375](#), Mar. 8, 2016]

§ 982.407 Enforcement of HQS.

Part 982 does not create any right of the family, or any party other than HUD or the PHA, to require enforcement of the HQS requirements by HUD or the PHA, or to assert any claim against HUD or the PHA, for damages, injunction or other relief, for alleged failure to enforce the HQS.

Subpart J - Housing Assistance Payments Contract and Owner Responsibility

Source: [60 FR 34695](#), July 3, 1995, unless otherwise noted.

§ 982.451 Housing assistance payments contract.

(a)

(1) The HAP contract must be in the form required by HUD.

(2) The term of the HAP contract is the same as the term of the lease.

(b)

(1) The amount of the monthly housing assistance payment by the PHA to the owner is determined by the PHA in accordance with HUD regulations and other requirements. The amount of the housing assistance payment is subject to change during the HAP contract term.

(2) The monthly housing assistance payment by the PHA is credited toward the monthly rent to owner under the family's lease.

(3) The total of rent paid by the tenant plus the PHA housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the PHA.

(4)

(i) The part of the rent to owner which is paid by the tenant may not be more than:

(A) The rent to owner; minus

(B) The PHA housing assistance payment to the owner.

(ii) The owner may not demand or accept any rent payment from the tenant in excess of this maximum, and must immediately return any excess rent payment to the tenant.

(iii) The family is not responsible for payment of the portion of rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA. See [§ 982.310\(b\)](#).

(5)

(i) The PHA must pay the housing assistance payment promptly when due to the owner in accordance with the HAP contract.

(ii)

(A) The HAP contract shall provide for penalties against the PHA for late payment of housing assistance payments due to the owner if all the following circumstances apply:

(1) Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant;

(2) It is the owner's practice to charge such penalties for assisted and unassisted tenants; and

(3) The owner also charges such penalties against the tenant for late payment of family rent to owner.

(B) The PHA is not obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. The PHA may add HAP contract provisions which define when the housing assistance payment by the PHA is deemed received by the owner (*e.g.*, upon mailing by the PHA or actual receipt by the owner).

(iii) The PHA may only use 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.

[[60 FR 34695](#), July 3, 1995, as amended at [61 FR 27163](#), May 30, 1996; [63 FR 23861](#), Apr. 30, 1998; [64 FR 26647](#), May 14, 1999; [64 FR 56914](#), Oct. 21, 1999]

§ 982.452 Owner responsibilities.

(a) The owner is responsible for performing all of the owner's obligations under the HAP contract and the lease.

(b) The owner is responsible for:

(1) Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit. The fact that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of tenancy if the applicant otherwise qualifies for tenancy.

(2) Maintaining the unit in accordance with HQS, including performance of ordinary and extraordinary maintenance. For provisions on family maintenance responsibilities, see [§ 982.404\(a\)\(4\)](#).

(3) Complying with equal opportunity requirements.

(4) Preparing and furnishing to the PHA information required under the HAP contract.

(5) Collecting from the family:

- (i) Any security deposit.
 - (ii) The tenant contribution (the part of rent to owner not covered by the housing assistance payment).
 - (iii) Any charges for unit damage by the family.
- (6) Enforcing tenant obligations under the lease.
- (7) Paying for utilities and services (unless paid by the family under the lease).
- (c) For provisions on modifications to a dwelling unit occupied or to be occupied by a disabled person, see [24 CFR 100.203](#).

(Approved by the Office of Management and Budget under control number 2577-0169)

[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [63 FR 23861](#), Apr. 30, 1998; [64 FR 26647](#), May 14, 1999; [73 FR 72345](#), Nov. 28, 2008; [75 FR 66264](#), Oct. 27, 2010; [80 FR 8246](#), Feb. 17, 2015; [81 FR 80817](#), Nov. 16, 2016]

§ 982.453 Owner breach of contract.

- (a) Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:
- (1) If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.
 - (2) If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act ([42 U.S.C. 1437f](#)).
 - (3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
 - (4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.
 - (5) If the owner has engaged in drug-related criminal activity.
 - (6) If the owner has committed any violent criminal activity.

(b) The PHA rights and remedies against the owner under the HAP contract include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

[[60 FR 34695](#), July 3, 1995, as amended at [64 FR 26647](#), May 14, 1999; [64 FR 56914](#), Oct. 21, 1999; [65 FR 16821](#), Mar. 30, 2000]

§ 982.454 Termination of HAP contract: Insufficient funding.

The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

[[60 FR 34695](#), July 3, 1995, as amended at [64 FR 26647](#), May 14, 1999]

§ 982.455 Automatic termination of HAP contract.

The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.

[[64 FR 26647](#), May 14, 1999]

§ 982.456 Third parties.

(a) Even if the family continues to occupy the unit, the PHA may exercise any rights and remedies against the owner under the HAP contract.

(b)

(1) The family is not a party to or third party beneficiary of the HAP contract. Except as provided in [paragraph \(b\)\(2\)](#) of this section, the family may not exercise any right or remedy against the owner under the HAP contract.

(2) The tenant may exercise any right or remedy against the owner under the lease between the tenant and the owner, including enforcement of the owner's obligations under the tenancy addendum (which is included both in the HAP contract between the PHA and the owner; and in the lease between the tenant and the owner.)

(c) The HAP contract shall not be construed as creating any right of the family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the PHA or the owner under the HAP contract.

Subpart K - Rent and Housing Assistance Payment

Source: [63 FR 23861](#), Apr. 30, 1998, unless otherwise noted.

§ 982.501 Overview.

This subpart describes program requirements concerning the housing assistance payment and rent to owner under the HCV program.

[[80 FR 8246](#), Feb. 17, 2015]

§ 982.503 Payment standard amount and schedule.

(a) Payment standard schedule.

(1) HUD publishes the fair market rents for each market area in the United States (see [part 888 of this title](#)). The PHA must adopt a payment standard schedule that establishes voucher payment standard amounts for each FMR area in the PHA jurisdiction. For each FMR area, the PHA must establish payment standard amounts for each “unit size.” Unit size is measured by number of bedrooms (zero-bedroom, one-bedroom, and so on).

(2) The payment standard amounts on the PHA schedule are used to calculate the monthly housing assistance payment for a family ([§ 982.505](#)).

(3) The PHA voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may establish a separate payment standard amount for each designated part of the FMR area.

(b) Establishing payment standard amounts.

(1)

(i) The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to establish a payment standard amount in that range (“basic range”). The PHA must revise the payment standard amount no later than 3 months following the effective date of the published FMR if a change is necessary to stay within the basic range.

(ii) The PHA may establish a separate payment standard amount within the basic range for a designated part of an FMR area.

(iii) A PHA that is not in a designated Small Area FMR area or has not opted to voluntarily implement Small Area FMRs under [24 CFR 888.113\(c\)\(3\)](#) may establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published Small Area FMRs. The PHA may establish an exception payment standard up to 110 percent of the HUD published Small Area FMR for that ZIP

code area. The PHA must notify HUD if it establishes an exception payment standard based on the Small Area FMR. The exception payment standard must apply to the entire ZIP code area.

(iv) At the request of a PHA administering the HCV program under Small Area FMRs under [§ 888.113\(c\)\(3\)](#), HUD may approve an exception payment standard for a Small Area FMR area above the 110 percent of the published FMR in accordance with conditions set forth by Notice in the Federal Register. The requirements of [paragraph \(c\)](#) of this section do not apply to these exception payment standard requests and approvals.

(v) The PHA may establish an exception payment standard of not more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with [24 CFR part 8](#) for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at [§ 982.507](#).

(vi) The PHA may establish an exception payment standard of more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with [24 CFR part 8](#) for a family that includes a person with a disability after approval from HUD. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at [§ 982.507](#).

(2) Except as described in [paragraphs \(b\)\(1\)\(iii\)](#) through [\(v\)](#) of this section, the PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. [Paragraphs \(c\)](#) and [\(e\)](#) of this section describe the requirements for approval of a higher payment standard amount (“exception payment standard amount”).

(c) HUD approval of exception payment standard amount -

(1) **HUD discretion.** At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the fair market rent area (called an “exception area”). HUD may approve an exception payment standard amount in accordance with this [paragraph \(c\)](#) of this section for all units, or for all units of a given unit size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount.

(2) **Above 110 percent of FMR to 120 percent of published FMR.** The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by the median rent method or the 40th percentile rent or the Small Area FMR method as described in [paragraph \(c\)\(2\)\(ii\)](#) of this section (and that such approval is also supported by an appropriate program justification in accordance with [paragraph \(c\)\(4\)](#) of this section).

(i) ***Median rent method.*** In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(ii) ***40th percentile rent or Small Area FMR method.*** In this method, HUD determines that the area exception payment standard amount equals application of the 40th percentile of rents for standard quality rental housing in the exception area or the Small Area FMR. HUD determines whether the 40th percentile rent or Small Area FMR applies in accordance with the methodology described in [24 CFR 888.113](#) for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(3) *Above 120 percent of FMR.*

(i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

(A) Such approval is necessary to prevent financial hardship for families;

(B) Such approval is supported by statistically representative rental housing survey data to justify HUD approval in accordance with the methodology described in [§ 888.113 of this title](#); and

(C) Such approval is also supported by an appropriate program justification in accordance with [paragraph \(c\)\(4\)](#) of this section.

(ii) For purposes of [paragraph \(c\)\(3\)](#) of this section, the term “place” is an incorporated place or a U.S. Census designated place. An incorporated place is established by State law and includes cities, boroughs, towns, and villages. A U.S. Census designated place is the statistical counterpart of an incorporated place.

(4) *Program justification.*

(i) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(2) or [paragraph \(c\)\(3\)](#) of this section) if HUD determines that approval of such higher amount is needed either:

(A) To help families find housing outside areas of high poverty, or

(B) Because voucher holders have trouble finding housing for lease under the program within the term of the voucher.

(ii) HUD will only approve an exception payment standard amount (pursuant to [paragraph \(c\)\(3\)](#) of this section) after six months from the date of HUD approval of an exception payment standard pursuant to [paragraph \(c\)\(2\)](#) of this section for the area.

(5) ***Population.*** The total population of HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area, except when applying Small Area FMR exception areas under [paragraph \(b\)\(1\)\(iii\)](#) of this section.

(6) ***Withdrawal or modification.*** At any time, HUD may withdraw or modify approval to use an exception payment standard amount.

(d) ***HUD approval of payment standard amount below the basic range.*** HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income.

(e) ***HUD approval of 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 between 90 percent and 110 percent of the 50th percentile rent, calculated in accordance with the methodology described in [§ 888.113 of this title](#).

(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 \(e\)\(1\)\(i\)](#) 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.

(f) ***Payment standard protection for PHAs that meet deconcentration objectives.*** [Paragraph \(f\)](#) of this section 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 [§ 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 [§ 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.

(g) ***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.

[[64 FR 26648](#), May 14, 1999; [64 FR 49658](#), Sept. 14, 1999, as amended at [64 FR 56914](#), Oct. 21, 1999; [65 FR 16822](#), Mar. 30, 2000; [65 FR 58874](#), Oct. 2, 2000; [66 FR 30568](#), June 6, 2001; [67 FR 56688](#), Sept. 4, 2002; [80 FR 8246](#), Feb. 17, 2015; [81 FR 12376](#), Mar. 8, 2016; [81 FR 80582](#), Nov. 16, 2016]

§ 982.504 Payment standard for family in restructured subsidized multifamily project.

(a) This section applies to HCV assistance if all the following conditions are applicable:

(1) Such HCV assistance is provided to a family pursuant to [24 CFR 401.421](#) when HUD has approved a restructuring plan, and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such families. Such tenant-based voucher assistance is provided for a family previously receiving project-based assistance in an eligible project (as defined in [§ 401.2 of this title](#)) at the time when the project-based assistance terminates.

(2) The family chooses to remain in the restructured project with HCV assistance under the program and leases a unit that does not exceed the family unit size;

(3) The lease for such assisted tenancy commences during the first year after the project-based assistance terminates.

(b) The initial payment standard for the family under such initial lease is the sum of the reasonable rent to owner for the unit plus the utility allowance for tenant-paid utilities. (Determination of such initial payment standard for the family is not subject to [paragraphs \(c\)\(1\) and \(c\)\(2\) of § 982.505](#). Except for determination of the initial payment standard as specifically provided in [paragraph \(b\)](#) of this section, the payment standard and housing assistance payment for the family during the HAP contract term shall be determined in accordance with [§ 982.505](#).)

[[64 FR 26649](#), May 14, 1999, as amended at [80 FR 8247](#), Feb. 17, 2015]

§ 982.505 How to calculate housing assistance payment.

(a) ***Use of payment standard.*** A payment standard is used to calculate the monthly housing assistance payment for a family. The “payment standard” is the maximum monthly subsidy payment.

(b) ***Amount of monthly housing assistance payment.*** The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the *lower* of:

(1) The payment standard for the family minus the total tenant payment; or

(2) The gross rent minus the total tenant payment.

(c) ***Payment standard for family.***

(1) The payment standard for the family is the lower of:

(i) The payment standard amount for the family unit size; or

(ii) The payment standard amount for the size of the dwelling unit rented by the family.

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with [§ 982.503](#) (including an exception payment standard

amount as determined in accordance with [§ 982.503\(b\)\(2\)](#) and [§ 982.503\(c\)](#)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. The payment standard for the family shall be calculated in accordance with this paragraph and [paragraph \(c\)\(1\)](#) of this section.

(3) *Decrease in the payment standard amount during the HAP contract term.* If the amount on the payment standard schedule is decreased during the term of the HAP contract, the PHA is not required to reduce the payment standard amount used to calculate the subsidy for the families under HAP contract for as long as the HAP contract remains in effect.

(i) If the PHA chooses to reduce the payment standard for the families currently under HAP contract during the HAP contract term in accordance with their administrative plan, the initial reduction to the payment standard amount used to calculate the monthly housing assistance payment for the family may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount.

(ii) The PHA may choose to reduce the payment standard amount for families that remain under HAP contract to the current payment standard amount in effect on the PHA voucher payment standard schedule, or 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. The PHA may further reduce the payment standard amount for the families during the term of the HAP contract, provided the 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' notice that the payment standard is being reduced during the term of the HAP contract before the effective date of the change.

(iv) The PHA shall administer decreases in the payment standard amount during the term of the HAP contract in accordance with the PHA policy as described in the PHA administrative plan. The PHA may establish different policies for designated areas within their jurisdiction (*e.g.*, for different zip code areas), but the PHA administrative policy on decreases to payment standards during the term of the HAP contract applies to all families under HAP contract at the time of the effective date of decrease in the payment standard within that designated area. The PHA may not limit or otherwise establish different protections or policies for certain families under HAP contract.

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

(5) ***Change in family unit size during the HAP contract term.*** Irrespective of any increase or decrease in the payment standard amount, if the family unit size 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.

(d) ***PHA approval of higher payment standard for the family as a reasonable accommodation.*** If the family includes a person with disabilities and requires a payment standard above the basic range, as a reasonable accommodation for such person, in accordance with [part 8 of this title](#), the PHA may establish a payment standard for the family of not more than 120 percent of the FMR. A PHA may establish a payment standard greater than 120 percent of the FMR by submitting a request to HUD.

[[64 FR 26649](#), May 14, 1999, as amended at [64 FR 56914](#), Oct. 21, 1999; [65 FR 16822](#), Mar. 30, 2000; [65 FR 42509](#), July 10, 2000; [66 FR 30568](#), June 6, 2001; [67 FR 56689](#), Sept. 4, 2002; [80 FR 8247](#), Feb. 17, 2014; [81 FR 12376](#), Mar. 8, 2016; [81 FR 80582](#), Nov. 16, 2016]

§ 982.506 Negotiating rent to owner.

The owner and the family negotiate the rent to owner. At the family's request, the PHA must help the family negotiate the rent to owner.

[[63 FR 23861](#), Apr. 30, 1998. Redesignated at [64 FR 26648](#), May 14, 1999]

§ 982.507 Rent to owner: Reasonable rent.

(a) ***PHA determination.***

(1) Except as provided in [paragraph \(c\)](#) of this section, the PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

(2) The PHA must redetermine the reasonable rent:

(i) Before any increase in the rent to owner;

(ii) If there is a 10 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary.

(iii) If directed by HUD.

(3) The PHA may also redetermine the reasonable rent at any other time.

(4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the PHA.

(b) **Comparability.** The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

- (1) The location, quality, size, unit type, and age of the contract unit; and
- (2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) **Units assisted by low-income housing tax credits or assistance under HUD's HOME Investment Partnerships (HOME) program.**

(1) **General.** For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue Code of 1986 or receiving assistance under HUD's HOME Program (for which the regulations are found in [24 CFR part 92](#)), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

(2) **LIHTC.** If the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations and the rent shall not exceed the lesser of the:

- (i) Reasonable rent as determined pursuant to a rent comparability study; and
- (ii) The payment standard established by the PHA for the unit size involved.

(3) **HOME Program.** [Reserved]

(d) **Owner certification of rents charged for other units.** By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

[[63 FR 23861](#), Apr. 30, 1998. Redesignated at [64 FR 26648](#), May 14, 1999; [79 FR 36164](#), June 25, 2014; [81 FR 80583](#), Nov. 16, 2016]

§ 982.508 Maximum family share at initial occupancy.

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.

[[64 FR 59622](#), Nov. 3, 1999]

§ 982.509 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.

[[63 FR 23861](#), Apr. 30, 1998. Redesignated and amended at [64 FR 26648](#), May 14, 1999]

§ 982.510 Other fees and charges.

- (a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.
- (b) The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.
- (c) The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

[[63 FR 23861](#), Apr. 30, 1998. Redesignated at [64 FR 26648](#), May 14, 1999]

§ 982.514 Distribution of housing assistance payment.

The monthly housing assistance payment is distributed as follows:

- (a) The PHA pays the owner the lesser of the housing assistance payment or the rent to owner.
- (b) If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the housing assistance payment (“utility reimbursement”) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.
- (c) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.
 - (1) The PHA will have the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling \$45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement. PHAs exercising this option must have a hardship policy in place for tenants.
 - (2) If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

[[63 FR 23861](#), Apr. 30, 1998, as amended at [64 FR 56914](#), Oct. 21, 1999; [65 FR 16822](#), Mar. 30, 2000; [81 FR 12376](#), Mar. 8, 2016]

§ 982.515 Family share: Family responsibility.

- (a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.
- (b) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.
- (c) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

[[63 FR 23861](#), Apr. 30, 1998, as amended at [64 FR 56915](#), Oct. 21, 1999]

§ 982.516 Family income and composition: Annual and interim examinations.

(a) PHA responsibility for reexamination and verification.

- (1) The PHA must conduct a reexamination of family income and composition at least annually.
- (2) Except as provided in [paragraph \(a\)\(3\)](#) of this section, the PHA must obtain and document in the tenant file third-party verification of the following factors, or must document in the tenant file why third-party verification was not available:
 - (i) Reported family annual income;
 - (ii) The value of assets;
 - (iii) Expenses related to deductions from annual income; and
 - (iv) Other factors that affect the determination of adjusted income.
- (3) For a family with net assets equal to or less than \$5,000, a PHA may accept a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration.
 - (i) The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.
 - (ii) A PHA must obtain third-party verification of all family assets every 3 years.

(b) ***Streamlined income determination*** -

(1) ***General.*** A PHA may elect to apply a streamlined income determination to families receiving fixed income as described in [paragraph \(b\)\(3\)](#) of this section.

(2) ***Definition of “fixed income”.*** For purposes of this section, “fixed income” means periodic payments at reasonably predictable levels from one or more of the following sources:

(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance.

(ii) Federal, state, local, or private pension plans.

(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.

(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(3) ***Method of streamlined income determination.*** A PHA using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(i) When 90 percent or more of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, the PHA is not required to make adjustments pursuant to [paragraph \(a\)](#) of this section.

(ii) When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA to each of the family's sources of fixed income individually. The PHA must determine all other income pursuant to [paragraph \(a\)](#) of this section.

(4) ***COLA rate applied by PHAs.*** PHAs using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the owner must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(5) ***Triennial verification.*** For any income determined pursuant to a streamlined income determination, a PHA must obtain third-party verification of all income amounts every 3 years.

(c) ***Interim reexaminations.***

(1) At any time, the PHA may conduct an interim reexamination of family income and composition.

(2) At any time, the family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must make the interim determination within a reasonable time after the family request.

(3) Interim examinations must be conducted in accordance with policies in the PHA administrative plan.

(d) ***Family reporting of change.*** The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(e) ***Effective date of reexamination.***

(1) The PHA must adopt policies prescribing how to determine the effective date of a change in the housing assistance payment resulting from an interim redetermination.

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment in accordance with [§ 982.505](#).

(f) ***Accuracy of family income data.*** The PHA must establish procedures that are appropriate and necessary to assure that income data provided by applicant or participant families is complete and accurate.

(g) ***Execution of release and consent.***

(1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a HUD-approved release and consent form (including any release and consent as required under [§ 5.230 of this title](#)) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The PHA and HUD must limit the use or disclosure of information obtained from a family or from another source pursuant to this release and consent to purposes directly in connection with administration of the program.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

[[63 FR 23861](#), Apr. 30, 1998, as amended at [64 FR 13057](#), Mar. 16, 1999; [64 FR 26649](#), May 14, 1999; [64 FR 56915](#), Oct. 21, 1999; [65 FR 16822](#), Mar. 30, 2000; [80 FR 8247](#), Feb. 17, 2015; [81 FR 12376](#), Mar. 8, 2016; [82 FR 58341](#), Dec. 12, 2017; [85 FR 27139](#), May 7, 2020]

Editorial Note: At [64 FR 26649](#), May 14, 1999, [§ 982.516](#) was amended in paragraph (e) by removing the reference to “and family unit size”; however paragraph (e) does not contain this phrase.

§ 982.517 Utility allowance schedule.

(a) *Maintaining schedule.*

(1) The PHA must maintain a utility allowance schedule for all tenant-paid utilities (except telephone), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)).

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

(b) *How allowances are determined.*

(1) The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole and current utility rates.

(2)

(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. However, the PHA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

(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. 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.

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms), and unit types (e.g., apartment, row-house, town house, single-family detached, and manufactured housing) that are typical in the community.

(4) The utility allowance schedule must be prepared and submitted in accordance with HUD requirements on the form prescribed by HUD.

(c) *Revisions of utility allowance schedule.*

(1) A PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised. The PHA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.

(2) At HUD's direction, the PHA must revise the utility allowance schedule to correct any errors, or as necessary to update the schedule.

(d) *Use of utility allowance schedule.* 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. In cases where the unit size leased exceeds the family unit size as determined under the PHA subsidy standards as a result of a reasonable accommodation, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

(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 in accordance with [24 CFR part 8](#) to make the program accessible to and usable by the family member with a disability.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

[[63 FR 23861](#), Apr. 30, 1998, as amended at [80 FR 8247](#), Feb. 17, 2015; [81 FR 12377](#), Mar. 8, 2016]

§ 982.521 Rent to owner in subsidized project.

(a) *Applicability to subsidized project.* This section applies to a program tenancy in any of the following types of federally subsidized project:

- (1) An insured or non-insured Section 236 project;
- (2) A Section 202 project;
- (3) A Section 221(d)(3) below market interest rate (BMIR) project; or
- (4) A Section 515 project of the Rural Development Administration.

(b) ***How rent to owner is determined.*** The rent to owner is the subsidized rent as determined in accordance with requirements for the applicable federal program listed in [paragraph \(a\)](#) of this section. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see [§ 982.309](#)).

Subpart K - Rent and Housing Assistance Payment

Source: [63 FR 23861](#), Apr. 30, 1998, unless otherwise noted.

§ 982.501 Overview.

This subpart describes program requirements concerning the housing assistance payment and rent to owner under the HCV program.

[[80 FR 8246](#), Feb. 17, 2015]

§ 982.503 Payment standard amount and schedule.

(a) ***Payment standard schedule.***

(1) HUD publishes the fair market rents for each market area in the United States (see [part 888 of this title](#)). The PHA must adopt a payment standard schedule that establishes voucher payment standard amounts for each FMR area in the PHA jurisdiction. For each FMR area, the PHA must establish payment standard amounts for each “unit size.” Unit size is measured by number of bedrooms (zero-bedroom, one-bedroom, and so on).

(2) The payment standard amounts on the PHA schedule are used to calculate the monthly housing assistance payment for a family ([§ 982.505](#)).

(3) The PHA voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may establish a separate payment standard amount for each designated part of the FMR area.

(b) ***Establishing payment standard amounts.***

(1)

(i) The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to establish a payment standard amount in that range (“basic range”). The PHA must revise the payment standard amount no later than 3 months following the effective date of the published FMR if a change is necessary to stay within the basic range.

(ii) The PHA may establish a separate payment standard amount within the basic range for a designated part of an FMR area.

(iii) A PHA that is not in a designated Small Area FMR area or has not opted to voluntarily implement Small Area FMRs under [24 CFR 888.113\(c\)\(3\)](#) may establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published Small Area FMRs. The PHA may establish an exception payment standard up to 110 percent of the HUD published Small Area FMR for that ZIP code area. The PHA must notify HUD if it establishes an exception payment standard based on the Small Area FMR. The exception payment standard must apply to the entire ZIP code area.

(iv) At the request of a PHA administering the HCV program under Small Area FMRs under [§ 888.113\(c\)\(3\)](#), HUD may approve an exception payment standard for a Small Area FMR area above the 110 percent of the published FMR in accordance with conditions set forth by Notice in the Federal Register. The requirements of [paragraph \(c\)](#) of this section do not apply to these exception payment standard requests and approvals.

(v) The PHA may establish an exception payment standard of not more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with [24 CFR part 8](#) for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at [§ 982.507](#).

(vi) The PHA may establish an exception payment standard of more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with [24 CFR part 8](#) for a family that includes a person with a disability after approval from HUD. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at [§ 982.507](#).

(2) Except as described in [paragraphs \(b\)\(1\)\(iii\)](#) through [\(v\)](#) of this section, the PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. [Paragraphs \(c\)](#) and [\(e\)](#) of this section describe the requirements for approval of a higher payment standard amount (“exception payment standard amount”).

(c) HUD approval of exception payment standard amount -

(1) **HUD discretion.** At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the fair market rent area (called an “exception area”). HUD may approve an exception payment standard amount in accordance with this [paragraph \(c\)](#) of this section for all units, or for all units of a given unit size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount.

(2) ***Above 110 percent of FMR to 120 percent of published FMR.*** The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by the median rent method or the 40th percentile rent or the Small Area FMR method as described in [paragraph \(c\)\(2\)\(ii\)](#) of this section (and that such approval is also supported by an appropriate program justification in accordance with [paragraph \(c\)\(4\)](#) of this section).

(i) ***Median rent method.*** In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(ii) ***40th percentile rent or Small Area FMR method.*** In this method, HUD determines that the area exception payment standard amount equals application of the 40th percentile of rents for standard quality rental housing in the exception area or the Small Area FMR. HUD determines whether the 40th percentile rent or Small Area FMR applies in accordance with the methodology described in [24 CFR 888.113](#) for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(3) ***Above 120 percent of FMR.***

(i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

(A) Such approval is necessary to prevent financial hardship for families;

(B) Such approval is supported by statistically representative rental housing survey data to justify HUD approval in accordance with the methodology described in [§ 888.113 of this title](#); and

(C) Such approval is also supported by an appropriate program justification in accordance with [paragraph \(c\)\(4\)](#) of this section.

(ii) For purposes of [paragraph \(c\)\(3\)](#) of this section, the term “place” is an incorporated place or a U.S. Census designated place. An incorporated place is established by State law and includes cities, boroughs, towns, and villages. A U.S. Census designated place is the statistical counterpart of an incorporated place.

(4) ***Program justification.***

(i) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(2) or [paragraph \(c\)\(3\)](#) of this section) if HUD determines that approval of such higher amount is needed either:

(A) To help families find housing outside areas of high poverty, or

(B) Because voucher holders have trouble finding housing for lease under the program within the term of the voucher.

(ii) HUD will only approve an exception payment standard amount (pursuant to [paragraph \(c\)\(3\)](#) of this section) after six months from the date of HUD approval of an exception payment standard pursuant to [paragraph \(c\)\(2\)](#) of this section for the area.

(5) **Population.** The total population of HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area, except when applying Small Area FMR exception areas under [paragraph \(b\)\(1\)\(iii\)](#) of this section.

(6) **Withdrawal or modification.** At any time, HUD may withdraw or modify approval to use an exception payment standard amount.

(d) **HUD approval of payment standard amount below the basic range.** HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income.

(e) **HUD approval of 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 between 90 percent and 110 percent of the 50th percentile rent, calculated in accordance with the methodology described in [§ 888.113 of this title](#).

(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 \(e\)\(1\)\(i\)](#) 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.

(f) ***Payment standard protection for PHAs that meet deconcentration objectives.*** [Paragraph \(f\)](#) of this section 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 [§ 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 [§ 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.

(g) ***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.

[[64 FR 26648](#), May 14, 1999; [64 FR 49658](#), Sept. 14, 1999, as amended at [64 FR 56914](#), Oct. 21, 1999; [65 FR 16822](#), Mar. 30, 2000; [65 FR 58874](#), Oct. 2, 2000; [66 FR 30568](#), June 6, 2001; [67 FR 56688](#), Sept. 4, 2002; [80 FR 8246](#), Feb. 17, 2015; [81 FR 12376](#), Mar. 8, 2016; [81 FR 80582](#), Nov. 16, 2016]

§ 982.504 Payment standard for family in restructured subsidized multifamily project.

(a) This section applies to HCV assistance if all the following conditions are applicable:

(1) Such HCV assistance is provided to a family pursuant to [24 CFR 401.421](#) when HUD has approved a restructuring plan, and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such families. Such tenant-based voucher assistance is provided for a family previously receiving project-based assistance in an eligible project (as defined in [§ 401.2 of this title](#)) at the time when the project-based assistance terminates.

(2) The family chooses to remain in the restructured project with HCV assistance under the program and leases a unit that does not exceed the family unit size;

(3) The lease for such assisted tenancy commences during the first year after the project-based assistance terminates.

(b) The initial payment standard for the family under such initial lease is the sum of the reasonable rent to owner for the unit plus the utility allowance for tenant-paid utilities. (Determination of such initial payment standard for the family is not subject to [paragraphs \(c\)\(1\) and \(c\)\(2\) of § 982.505](#). Except for determination of the initial payment standard as specifically provided in [paragraph \(b\)](#) of this section, the payment standard and housing assistance payment for the family during the HAP contract term shall be determined in accordance with [§ 982.505](#).)

[[64 FR 26649](#), May 14, 1999, as amended at [80 FR 8247](#), Feb. 17, 2015]

§ 982.505 How to calculate housing assistance payment.

(a) ***Use of payment standard.*** A payment standard is used to calculate the monthly housing assistance payment for a family. The “payment standard” is the maximum monthly subsidy payment.

(b) ***Amount of monthly housing assistance payment.*** The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the *lower* of:

(1) The payment standard for the family minus the total tenant payment; or

(2) The gross rent minus the total tenant payment.

(c) ***Payment standard for family.***

(1) The payment standard for the family is the lower of:

- (i) The payment standard amount for the family unit size; or
- (ii) The payment standard amount for the size of the dwelling unit rented by the family.

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with [§ 982.503](#) (including an exception payment standard amount as determined in accordance with [§ 982.503\(b\)\(2\)](#) and [§ 982.503\(c\)](#)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. The payment standard for the family shall be calculated in accordance with this paragraph and [paragraph \(c\)\(1\)](#) of this section.

(3) ***Decrease in the payment standard amount during the HAP contract term.*** If the amount on the payment standard schedule is decreased during the term of the HAP contract, the PHA is not required to reduce the payment standard amount used to calculate the subsidy for the families under HAP contract for as long as the HAP contract remains in effect.

(i) If the PHA chooses to reduce the payment standard for the families currently under HAP contract during the HAP contract term in accordance with their administrative plan, the initial reduction to the payment standard amount used to calculate the monthly housing assistance payment for the family may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount.

(ii) The PHA may choose to reduce the payment standard amount for families that remain under HAP contract to the current payment standard amount in effect on the PHA voucher payment standard schedule, or 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. The PHA may further reduce the payment standard amount for the families during the term of the HAP contract, provided the 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' notice that the payment standard is being reduced during the term of the HAP contract before the effective date of the change.

(iv) The PHA shall administer decreases in the payment standard amount during the term of the HAP contract in accordance with the PHA policy as described in the PHA administrative plan. The PHA may establish different policies for designated areas within their jurisdiction (*e.g.*, for different zip code areas), but the PHA administrative policy on decreases to payment standards during the term of the HAP contract applies to all families

under HAP contract at the time of the effective date of decrease in the payment standard within that designated area. The PHA may not limit or otherwise establish different protections or policies for certain families under HAP contract.

(4) ***Increase in the payment standard amount during the HAP contract term.*** If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

(5) ***Change in family unit size during the HAP contract term.*** Irrespective of any increase or decrease in the payment standard amount, if the family unit size 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.

(d) ***PHA approval of higher payment standard for the family as a reasonable accommodation.*** If the family includes a person with disabilities and requires a payment standard above the basic range, as a reasonable accommodation for such person, in accordance with [part 8 of this title](#), the PHA may establish a payment standard for the family of not more than 120 percent of the FMR. A PHA may establish a payment standard greater than 120 percent of the FMR by submitting a request to HUD.

[[64 FR 26649](#), May 14, 1999, as amended at [64 FR 56914](#), Oct. 21, 1999; [65 FR 16822](#), Mar. 30, 2000; [65 FR 42509](#), July 10, 2000; [66 FR 30568](#), June 6, 2001; [67 FR 56689](#), Sept. 4, 2002; [80 FR 8247](#), Feb. 17, 2014; [81 FR 12376](#), Mar. 8, 2016; [81 FR 80582](#), Nov. 16, 2016]

§ 982.506 Negotiating rent to owner.

The owner and the family negotiate the rent to owner. At the family's request, the PHA must help the family negotiate the rent to owner.

[[63 FR 23861](#), Apr. 30, 1998. Redesignated at [64 FR 26648](#), May 14, 1999]

§ 982.507 Rent to owner: Reasonable rent.

(a) ***PHA determination.***

(1) Except as provided in [paragraph \(c\)](#) of this section, the PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

(2) The PHA must redetermine the reasonable rent:

(i) Before any increase in the rent to owner;

(ii) If there is a 10 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary.

(iii) If directed by HUD.

(3) The PHA may also redetermine the reasonable rent at any other time.

(4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the PHA.

(b) **Comparability.** The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) **Units assisted by low-income housing tax credits or assistance under HUD's HOME Investment Partnerships (HOME) program.**

(1) **General.** For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue Code of 1986 or receiving assistance under HUD's HOME Program (for which the regulations are found in [24 CFR part 92](#)), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

(2) **LIHTC.** If the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations and the rent shall not exceed the lesser of the:

(i) Reasonable rent as determined pursuant to a rent comparability study; and

(ii) The payment standard established by the PHA for the unit size involved.

(3) **HOME Program.** [Reserved]

(d) **Owner certification of rents charged for other units.** By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

[[63 FR 23861](#), Apr. 30, 1998. Redesignated at [64 FR 26648](#), May 14, 1999; [79 FR 36164](#), June 25, 2014; [81 FR 80583](#), Nov. 16, 2016]

§ 982.508 Maximum family share at initial occupancy.

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.

[[64 FR 59622](#), Nov. 3, 1999]

§ 982.509 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.

[[63 FR 23861](#), Apr. 30, 1998. Redesignated and amended at [64 FR 26648](#), May 14, 1999]

§ 982.510 Other fees and charges.

- (a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.
- (b) The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.
- (c) The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

[[63 FR 23861](#), Apr. 30, 1998. Redesignated at [64 FR 26648](#), May 14, 1999]

§ 982.514 Distribution of housing assistance payment.

The monthly housing assistance payment is distributed as follows:

- (a) The PHA pays the owner the lesser of the housing assistance payment or the rent to owner.
- (b) If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the housing assistance payment (“utility reimbursement”) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the

utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

(c) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(1) The PHA will have the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling \$45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement. PHAs exercising this option must have a hardship policy in place for tenants.

(2) If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

[[63 FR 23861](#), Apr. 30, 1998, as amended at [64 FR 56914](#), Oct. 21, 1999; [65 FR 16822](#), Mar. 30, 2000; [81 FR 12376](#), Mar. 8, 2016]

§ 982.515 Family share: Family responsibility.

(a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(b) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.

(c) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

[[63 FR 23861](#), Apr. 30, 1998, as amended at [64 FR 56915](#), Oct. 21, 1999]

§ 982.516 Family income and composition: Annual and interim examinations.

(a) *PHA responsibility for reexamination and verification.*

(1) The PHA must conduct a reexamination of family income and composition at least annually.

(2) Except as provided in [paragraph \(a\)\(3\)](#) of this section, the PHA must obtain and document in the tenant file third-party verification of the following factors, or must document in the tenant file why third-party verification was not available:

(i) Reported family annual income;

- (ii) The value of assets;
- (iii) Expenses related to deductions from annual income; and
- (iv) Other factors that affect the determination of adjusted income.

(3) For a family with net assets equal to or less than \$5,000, a PHA may accept a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration.

- (i) The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.
- (ii) A PHA must obtain third-party verification of all family assets every 3 years.

(b) *Streamlined income determination* -

(1) **General.** A PHA may elect to apply a streamlined income determination to families receiving fixed income as described in [paragraph \(b\)\(3\)](#) of this section.

(2) **Definition of “fixed income”.** For purposes of this section, “fixed income” means periodic payments at reasonably predictable levels from one or more of the following sources:

- (i) Social Security, Supplemental Security Income, Supplemental Disability Insurance.
- (ii) Federal, state, local, or private pension plans.
- (iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.
- (iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(3) **Method of streamlined income determination.** A PHA using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

- (i) When 90 percent or more of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, the PHA is not required to make adjustments pursuant to [paragraph \(a\)](#) of this section.

(ii) When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA to each of the family's sources of fixed income individually. The PHA must determine all other income pursuant to [paragraph \(a\)](#) of this section.

(4) ***COLA rate applied by PHAs.*** PHAs using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the owner must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(5) ***Triennial verification.*** For any income determined pursuant to a streamlined income determination, a PHA must obtain third-party verification of all income amounts every 3 years.

(c) ***Interim reexaminations.***

(1) At any time, the PHA may conduct an interim reexamination of family income and composition.

(2) At any time, the family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must make the interim determination within a reasonable time after the family request.

(3) Interim examinations must be conducted in accordance with policies in the PHA administrative plan.

(d) ***Family reporting of change.*** The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(e) ***Effective date of reexamination.***

(1) The PHA must adopt policies prescribing how to determine the effective date of a change in the housing assistance payment resulting from an interim redetermination.

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment in accordance with [§ 982.505](#).

(f) ***Accuracy of family income data.*** The PHA must establish procedures that are appropriate and necessary to assure that income data provided by applicant or participant families is complete and accurate.

(g) ***Execution of release and consent.***

(1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a HUD-approved release and consent form (including any release and consent as required under [§ 5.230 of this title](#)) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The PHA and HUD must limit the use or disclosure of information obtained from a family or from another source pursuant to this release and consent to purposes directly in connection with administration of the program.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

[[63 FR 23861](#), Apr. 30, 1998, as amended at [64 FR 13057](#), Mar. 16, 1999; [64 FR 26649](#), May 14, 1999; [64 FR 56915](#), Oct. 21, 1999; [65 FR 16822](#), Mar. 30, 2000; [80 FR 8247](#), Feb. 17, 2015; [81 FR 12376](#), Mar. 8, 2016; [82 FR 58341](#), Dec. 12, 2017; [85 FR 27139](#), May 7, 2020]

Editorial Note

Editorial Note: At [64 FR 26649](#), May 14, 1999, [§ 982.516](#) was amended in paragraph (e) by removing the reference to “and family unit size”; however paragraph (e) does not contain this phrase.

§ 982.517 Utility allowance schedule.

(a) *Maintaining schedule.*

(1) The PHA must maintain a utility allowance schedule for all tenant-paid utilities (except telephone), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)).

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

(b) *How allowances are determined.*

(1) The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole and current utility rates.

(2)

(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. However, the PHA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

(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. 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.

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms), and unit types (e.g., apartment, row-house, town house, single-family detached, and manufactured housing) that are typical in the community.

(4) The utility allowance schedule must be prepared and submitted in accordance with HUD requirements on the form prescribed by HUD.

(c) *Revisions of utility allowance schedule.*

(1) A PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised. The PHA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.

(2) At HUD's direction, the PHA must revise the utility allowance schedule to correct any errors, or as necessary to update the schedule.

(d) *Use of utility allowance schedule.* 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. In cases where the unit size leased exceeds the family unit size as determined under the PHA subsidy standards as a result of a reasonable accommodation, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

(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 in accordance with [24 CFR part 8](#) to make the program accessible to and usable by the family member with a disability.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

[[63 FR 23861](#), Apr. 30, 1998, as amended at [80 FR 8247](#), Feb. 17, 2015; [81 FR 12377](#), Mar. 8, 2016]

§ 982.521 Rent to owner in subsidized project.

(a) ***Applicability to subsidized project.*** This section applies to a program tenancy in any of the following types of federally subsidized project:

- (1) An insured or non-insured Section 236 project;
- (2) A Section 202 project;
- (3) A Section 221(d)(3) below market interest rate (BMIR) project; or
- (4) A Section 515 project of the Rural Development Administration.

(b) ***How rent to owner is determined.*** The rent to owner is the subsidized rent as determined in accordance with requirements for the applicable federal program listed in [paragraph \(a\)](#) of this section. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see [§ 982.309](#)).

Subpart L - Family Obligations; Denial and Termination of Assistance

Source: [60 FR 34695](#), July 3, 1995, unless otherwise noted.

§ 982.551 Obligations of participant.

(a) ***Purpose.*** This section states the obligations of a participant family under the program.

(b) ***Supplying required information -***

(1) The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by [24 CFR part 5](#)). “Information” includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

(3) The family must disclose and verify social security numbers (as provided by part 5, subpart B, of this title) and must sign and submit consent forms for obtaining information in accordance with part 5, subpart B, of this title.

(4) Any information supplied by the family must be true and complete.

(c) **HQS breach caused by family.** The family is responsible for an HQS breach caused by the family as described in [§ 982.404\(b\)](#).

(d) **Allowing PHA inspection.** The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice.

(e) **Violation of lease.** The family may not commit any serious or repeated violation of the lease. Under [24 CFR 5.2005\(c\)](#), an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated lease violation by the victim, or threatened victim, of the domestic violence, dating violence, sexual assault, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim.

(f) **Family notice of move or lease termination.** The family must notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See [§ 982.354\(d\)](#).

(g) **Owner eviction notice.** The family must promptly give the PHA a copy of any owner eviction notice.

(h) **Use and occupancy of unit -**

(1) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

(2) The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in [paragraph \(h\)\(4\)](#) of this section).

(3) The family must promptly notify the PHA if any family member no longer resides in the unit.

(4) If the PHA has given approval, a foster child or a live-in-aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining when PHA consent may be given or denied.

(5) Members of the household may engage in legal profitmaking activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family.

(6) The family must not sublease or let the unit.

(7) The family must not assign the lease or transfer the unit.

(i) ***Absence from unit.*** The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit.

(j) ***Interest in unit.*** The family must not own or have any interest in the unit.

(k) ***Fraud and other program violation.*** The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

(l) ***Crime by household members.*** The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see [§ 982.553](#)). Under [24 CFR 5.2005\(b\)\(2\)](#), criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household, or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or an affiliated individual of the tenant, as defined in [24 CFR 5.2003](#), is the victim.

(m) ***Alcohol abuse by household members.*** The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

(n) ***Other housing assistance.*** An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.

(Approved by the Office of Management and Budget under control number 2577-0169)

[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [61 FR 11119](#), Mar. 18, 1996; [61 FR 13627](#), Mar. 27, 1996; [61 FR 27163](#), May 30, 1996; [64 FR 26650](#), May 14, 1999; [66 FR 28805](#), May 24, 2001; [73 FR 72345](#), Nov. 28, 2008; [75 FR 66264](#), Oct. 27, 2010; [80 FR 50575](#), Aug. 20, 2015; [81 FR 80817](#), Nov. 16, 2016]

§ 982.552 PHA denial or termination of assistance for family.

(a) ***Action or inaction by family.***

(1) A PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or [§ 982.553](#). The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

(2) Denial of assistance for an applicant may include any or all of the following: denying listing on the PHA waiting list, denying or withdrawing a voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.

(3) Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures.

(4) This section does not limit or affect exercise of the PHA rights and remedies against the owner under the HAP contract, including termination, suspension or reduction of housing assistance payments, or termination of the HAP contract.

(b) *Requirement to deny admission or terminate assistance.*

(1) For provisions on denial of admission and termination of assistance for illegal drug use, other criminal activity, and alcohol abuse that would threaten other residents, see [§ 982.553](#).

(2) The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.

(3) The PHA must deny admission to the program for an applicant, or terminate program assistance for a participant, if any member of the family fails to sign and submit consent forms for obtaining information in accordance with part 5, subparts B and F of this title.

(4) The family must submit required evidence of citizenship or eligible immigration status. See [part 5 of this title](#) for a statement of circumstances in which the PHA must deny admission or terminate program assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures.

(5) The PHA must deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in [24 CFR 5.612](#).

(c) *Authority to deny admission or terminate assistance -*

(1) ***Grounds for denial or termination of assistance.*** The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see [§ 982.551](#)). See [§ 982.553](#) concerning denial or termination of assistance for crime by family members.

(ii) If any member of the family has been evicted from federally assisted housing in the last five years;

(iii) If a PHA has ever terminated assistance under the program for any member of the family.

(iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program (see also [§ 982.553\(a\)\(1\)](#));

(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

(vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

(viii) If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation.

(ix) If the family has engaged in or threatened abusive or violent behavior toward PHA personnel.

(x) If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

(xi) If the family has been engaged in criminal activity or alcohol abuse as described in [§ 982.553](#).

(2) ***Consideration of circumstances.*** In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the

action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

(iii) In determining whether to deny admission or terminate assistance for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully ([42 U.S.C. 13661](#)). For this purpose, the PHA may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(iv) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with [part 8 of this title](#).

(v) ***Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking.*** The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of [24 CFR 5.105](#), and with the requirements of [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(d) ***Information for family.*** The PHA must give the family a written description of:

(1) Family obligations under the program.

(2) The grounds on which the PHA may deny or terminate assistance because of family action or failure to act.

(3) The PHA informal hearing procedures.

(e) ***Applicant screening.*** The PHA may at any time deny program assistance for an applicant in accordance with the PHA policy, as stated in the PHA administrative plan, on screening of applicants for family behavior or suitability for tenancy.

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [61 FR 13627](#), Mar. 27, 1996; [63 FR 23865](#), Apr. 30, 1998; [64 FR 26650](#), May 14, 1999; [64 FR 49659](#), Sept. 14, 1999; [64 FR 56915](#), Oct. 21, 1999; [65 FR 16823](#), Mar. 30, 2000; [66 FR 28805](#), May 24, 2001; [70 FR 77744](#), Dec. 30, 2005; [73 FR 72345](#), Nov. 28, 2008; [75 FR 66264](#), Oct. 27, 2010; [80 FR 8247](#), Feb. 17, 2015; [81 FR 80817](#), Nov. 16, 2016]

§ 982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) ***Denial of admission -***

(1) ***Prohibiting admission of drug criminals.***

(i) The PHA *must* prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that prohibit admission if:

(A) The PHA determines that any household member is currently engaging in illegal use of a drug;

(B) The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(C) Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) ***Prohibiting admission of other criminals -***

(i) ***Mandatory prohibition.*** The PHA *must* establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

(ii) ***Permissive prohibitions.***

(A) The PHA *may* prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(B) The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in [paragraph \(a\)\(2\)\(i\)](#) of this section (“reasonable time”).

(C) If the PHA previously denied admission to an applicant because a member of the household engaged in criminal activity, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(1) The PHA would have “sufficient evidence” if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(2) For purposes of this section, a household member is “currently engaged in” criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(3) ***Prohibiting admission of alcohol abusers.*** The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) ***Terminating assistance -***

(1) ***Terminating assistance for drug criminals.***

(i) The PHA *must* establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under [§ 982.551](#) not to engage in any drug-related criminal activity.

(2) ***Terminating assistance for other criminals.*** The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under [§ 982.551](#) not to engage in violent criminal activity.

(3) ***Terminating assistance for alcohol abusers.*** The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) ***Evidence of criminal activity.*** The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) ***Use of criminal record -***

(1) ***Denial.*** If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the subject of the record and the applicant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with [§ 982.554](#). (See part 5, subpart J for provision concerning access to criminal records.)

(2) ***Termination of assistance.*** If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record in accordance with [§ 982.555](#).

(3) ***Cost of obtaining criminal record.*** The PHA may not pass along to the tenant the costs of a criminal records check.

(e) The requirements in [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

[[66 FR 28805](#), May 24, 2001, as amended at [73 FR 72345](#), Nov. 28, 2008; [75 FR 66264](#), Oct. 27, 2010; [80 FR 8247](#), Feb. 17, 2015; [81 FR 80817](#), Nov. 16, 2016]

§ 982.554 Informal review for applicant.

(a) ***Notice to applicant.*** The PHA must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the PHA decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

(b) ***Informal review process.*** The PHA must give an applicant an opportunity for an informal review of the PHA decision denying assistance to the applicant. The administrative plan must state the PHA procedures for conducting an informal review. The PHA review procedures must comply with the following:

(1) The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(2) The applicant must be given an opportunity to present written or oral objections to the PHA decision.

(3) The PHA must notify the applicant of the PHA final decision after the informal review, including a brief statement of the reasons for the final decision.

(c) ***When informal review is not required.*** The PHA is not required to provide the applicant an opportunity for an informal review for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) A determination of the family unit size under the PHA subsidy standards.

(4) A PHA determination not to approve an extension of the voucher term.

(5) A PHA determination not to grant approval of the tenancy.

(6) An PHA determination that a unit selected by the applicant is not in compliance with HQS.

(7) An PHA determination that the unit is not in accordance with HQS because of the family size or composition.

(d) ***Restrictions on assistance for noncitizens.*** The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in [24 CFR part 5](#).

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[[60 FR 34695](#), July 3, 1995, as amended at [60 FR 45661](#), Sept. 1, 1995; [61 FR 13627](#), Mar. 27, 1996; [64 FR 26650](#), May 14, 1999; [80 FR 50575](#), Aug. 20, 2015]

§ 982.555 Informal hearing for participant.

(a) *When hearing is required.*

(1) A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.

(iii) A determination of the family unit size under the PHA subsidy standards.

(iv) A determination to terminate assistance for a participant family because of the family's action or failure to act (see [§ 982.552](#)).

(v) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.

(2) In the cases described in [paragraphs \(a\)\(1\) \(iv\), \(v\) and \(vi\)](#) of this section, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) Establishment of the PHA schedule of utility allowances for families in the program.

(4) A PHA determination not to approve an extension of the voucher term.

(5) A PHA determination not to approve a unit or tenancy.

(6) A PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in [§ 982.551\(c\)](#).)

(7) A PHA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the PHA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

(c) ***Notice to family.***

(1) In the cases described in [paragraphs \(a\)\(1\) \(i\), \(ii\) and \(iii\)](#) of this section, the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

(2) In the cases described in [paragraphs \(a\)\(1\) \(iv\), \(v\) and \(vi\)](#) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:

(i) Contain a brief statement of reasons for the decision,

(ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and

(iii) State the deadline for the family to request an informal hearing.

(d) ***Expeditious hearing process.*** Where a hearing for a participant family is required under this section, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) ***Hearing procedures -***

(1) ***Administrative plan.*** The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) ***Discovery -***

(i) ***By family.*** The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

(ii) ***By PHA.*** The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that

are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

(iii) **Documents.** The term “documents” includes records and regulations.

(3) **Representation of family.** At its own expense, the family may be represented by a lawyer or other representative.

(4) **Hearing officer: Appointment and authority.**

(i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) **Evidence.** The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) **Issuance of decision.** The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) **Effect of decision.** The PHA is not bound by a hearing decision:

(1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

(g) **Restrictions on assistance to noncitizens.** The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in [24 CFR part 5](#).

PART 983 - PROJECT-BASED VOUCHER (PBV) PROGRAM

Authority: [42 U.S.C. 1437f](#) and [3535\(d\)](#).

Source: [70 FR 59913](#), Oct. 13, 2005, unless otherwise noted.

Subpart A - General

§ 983.1 When the PBV rule (24 CFR part 983) applies.

Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section 8(o)(13) of the U.S. Housing Act of 1937 ([42 U.S.C. 1437f\(o\)\(13\)](#)).

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

(a) **24 CFR Part 982**. Part 982 is the basic regulation for the tenant-based voucher program. [Paragraphs \(b\)](#) and [\(c\)](#) of this section describe the provisions of part 982 that do not apply to the PBV program. The rest of part 982 applies to the PBV program. For use and applicability of voucher program definitions at [§ 982.4](#), see [§ 983.3](#).

(b) ***Types of 24 CFR part 982 provisions that do not apply to PBV.*** The following types of provisions in [24 CFR part 982](#) do not apply to PBV assistance under part 983.

- (1) Provisions on issuance or use of a voucher;
- (2) Provisions on portability;
- (3) Provisions on the following special housing types: Shared housing, manufactured home space rental, and the homeownership option.

(c) ***Specific 24 CFR part 982 provisions that do not apply to PBV assistance.*** Except as specified in this paragraph, the following specific provisions in [24 CFR part 982](#) do not apply to PBV assistance under part 983.

(1) In subpart E of part 982: [paragraph \(b\)\(2\) of § 982.202](#) and [paragraph \(d\) of § 982.204](#);

(2) Subpart G of part 982 does not apply, with the following exceptions:

- (i) [Section 982.310](#) (owner termination of tenancy) applies to the PBV program, but to the extent that those provisions differ from [§ 983.257](#), the provisions of [§ 983.257](#) govern; and

(ii) [Section 982.312](#) (absence from unit) applies to the PBV Program, but to the extent that those provisions differ from [§ 983.256\(g\)](#), the provisions of [§ 983.256\(g\)](#) govern; and

(iii) [Section 982.316](#) (live-in aide) applies to the PBV Program;

(3) Subpart H of part 982;

(4) In subpart I of part 982: [§ 982.401\(j\)](#); paragraphs (a)(3), (c), and (d) of [§ 982.402](#); [§ 982.403](#); [§ 982.405\(a\)](#); and [§ 982.407](#);

(5) In subpart J of part 982: [§ 982.455](#);

(6) Subpart K of Part 982: subpart K does not apply, except that the following provisions apply to the PBV Program:

(i) [Section 982.503](#) (for determination of the payment standard amount and schedule for a Fair Market Rent (FMR) area or for a designated part of an FMR area). However, provisions authorizing approval of a higher payment standard as a reasonable accommodation for a particular family that includes a person with disabilities do not apply (since the payment standard amount does not affect availability of a PBV unit for occupancy by a family or the amount paid by the family);

(ii) [Section 982.516](#) (family income and composition; regular and interim examinations);

(iii) [Section 982.517](#) (utility allowance schedule);

(7) In subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and

(ii) Provisions concerning shared housing ([§ 982.615](#) through [§ 982.618](#)), manufactured home space rental ([§ 982.622](#) through [§ 982.624](#)), and the homeownership option ([§ 982.625](#) through [§ 982.641](#)).

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36165](#), June 25, 2014; [81 FR 12377](#), Mar. 8, 2016]

§ 983.3 PBV definitions.

(a) *Use of PBV definitions* -

(1) ***PBV terms (defined in this section).*** This section defines PBV terms that are used in this part 983. For PBV assistance, the definitions in this section apply to use of the defined terms in part 983 and in applicable provisions of [24 CFR part 982](#). ([Section 983.2](#) specifies which provisions in part 982 apply to PBV assistance under part 983.)

(2) ***Other voucher terms (terms defined in [24 CFR 982.4](#)).***

(i) The definitions in this section apply instead of definitions of the same terms in [24 CFR 982.4](#).

(ii) Other voucher terms are defined in [§ 982.4](#), but are not defined in this section. Those [§ 982.4](#) definitions apply to use of the defined terms in this part 983 and in provisions of part 982 that apply to part 983.

(b) ***PBV definitions. 1937 Act.*** The United States Housing Act of 1937 ([42 U.S.C. 1437 et seq.](#)).

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

Admission. The point when the family becomes a participant in the PHA's tenant-based or project-based voucher program (initial receipt of tenant-based or project-based assistance). 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). The Agreement is a written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing 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. HUD will keep the public informed about changes to the Agreement and other forms and contracts related to this program through appropriate means.

Assisted living facility. A residence facility (including a facility located in a larger multifamily property) that meets all the following criteria:

- (1) The facility is licensed and regulated as an assisted living facility by the state, municipality, or other political subdivision;
- (2) The facility makes available supportive services to assist residents in carrying out activities of daily living; and
- (3) The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and actually available to provide supportive services for the residents.

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.

Contract units. The housing units covered by a HAP contract.

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. Construction or rehabilitation of PBV housing after the proposal selection date.

Excepted units (units in a multifamily project not counted against the 25 percent per- project cap). See [§ 983.56\(b\)\(2\)\(i\)](#).

Existing housing. Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date. (The units must fully comply with the HQS before execution of the HAP contract.)

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:

- (1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and
- (2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

Housing credit agency. For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a State participating jurisdiction under HUD's HOME program (see [24 CFR part 92](#)), or other State housing agencies that meet the definition of “housing credit agency” as defined by section 42 of the Internal Revenue Code of 1986.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the program. See [24 CFR 982.401](#).

Lease. A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

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 pursuant to an Agreement between the PHA and owner for use under the PBV program.

Partially assisted project. A project in which there are fewer contract units than residential units.

PHA-owned unit. A dwelling unit owned by the PHA that administers the voucher program. PHA-owned means that the PHA or its officers, employees, or agents hold a direct or indirect interest in the building in which the unit is located, including an interest as titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or an entity that holds any such direct or indirect interest.

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 [§ 983.10](#)).

Proposal selection date. The date the PHA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in the PHA's administrative plan.

Qualifying families (for purpose of exception to 25 percent per-project cap). See [§ 983.56\(b\)\(2\)\(ii\)](#).

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, pursuant to an Agreement between the PHA and owner, for use under the PBV program.

Release of funds (for purposes of environmental review). Release of funds in the case of the project-based voucher program, under [24 CFR 58.1\(b\)\(6\)\(iii\)](#) and [§ 983.58](#), means that HUD approves the local PHA's Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD-7015.16) that authorizes the PHA to execute an “agreement to enter into housing assistance payment contract” (AHAP) or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

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).

Site. The grounds where the contract units are located, or will be located after development pursuant to the Agreement.

Special housing type. Subpart M of [24 CFR part 982](#) states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

Tenant-paid utilities. Utility service that is not included in the tenant rent (as defined in [24 CFR 982.4](#)), and which is the responsibility of the assisted family.

Total tenant payment. The amount described in [24 CFR 5.628](#).

Utility allowance. See [24 CFR 5.603](#).

Utility reimbursement. See [24 CFR 5.603](#).

Wrong-size unit. A unit occupied by a family that does not conform to the PHA's subsidy guideline for family size, by being either too large or too small compared to the guideline.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36165](#), June 25, 2014; [81 FR 80818](#), Nov. 16, 2016]

§ 983.4 Cross-reference to other Federal requirements.

The following provisions apply to assistance under the PBV program.

Civil money penalty. Penalty for owner breach of HAP contract. See [24 CFR 30.68](#).

Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. See [24 CFR 5.105\(c\)](#) and [2 CFR part 2424](#).

Definitions. See [24 CFR part 5, subpart D](#).

Disclosure and verification of income information. See [24 CFR part 5, subpart B](#).

Environmental review. See [24 CFR parts 50](#) and [58](#) (see also provisions on PBV environmental review at [§ 983.58](#)).

Fair housing. Nondiscrimination and equal opportunity. See [24 CFR 5.105\(a\)](#) and section 504 of the Rehabilitation Act.

Fair market rents. See [24 CFR part 888, subpart A](#).

Fraud. See [24 CFR part 792](#). PHA retention of recovered funds.

Funds. See [24 CFR part 791](#). HUD allocation of voucher funds.

Income and family payment. See [24 CFR part 5, subpart F](#) (especially [§ 5.603](#) (definitions), [§ 5.609](#) (annual income), [§ 5.611](#) (adjusted income), [§ 5.628](#) (total tenant payment), [§ 5.630](#) (minimum rent), [§ 5.603](#) (utility allowance), [§ 5.603](#) (utility reimbursements), and [§ 5.661](#) (section 8 project-based assistance programs: approval for police or other security personnel to live in project)).

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 development (including rehabilitation) of a project comprising nine or more assisted units.

Lead-based paint. Regulations implementing the Lead-based Paint Poisoning Prevention Act ([42 U.S.C. 4821-4846](#)) and the Residential Lead-based Paint Hazard Reduction Act of 1992 ([42 U.S.C. 4851-4856](#)). See [24 CFR part 35, subparts A, B, H](#), and R.

Lobbying restriction. Restrictions on use of funds for lobbying. See [24 CFR 5.105\(b\)](#).

Noncitizens. Restrictions on assistance. See [24 CFR part 5, subpart E](#).

Program accessibility. Regulations implementing Section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)). See [24 CFR parts 8](#) and [9](#).

Protection for victims of domestic violence, dating violence, or stalking. See [24 CFR part 5, subpart L](#).

Protection for victims of domestic violence, dating violence, sexual assault, or stalking. See [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD's regulations in [24 CFR part 5, subpart L](#), the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in [24 CFR part 5, subpart L](#).

Relocation assistance. Regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) ([42 U.S.C. 4201-4655](#)). See [49 CFR part 24](#).

Uniform financial reporting standards. See [24 CFR part 5, subpart H](#).

Waiver of HUD rules. See [24 CFR 5.110](#).

[[70 FR 59913](#), Oct. 13, 2005, as amended at [72 FR 73497](#), Dec. 27, 2007; [73 FR 72345](#), Nov. 28, 2008; [75 FR 66264](#), Oct. 24, 2010; [79 FR 36165](#), June 25, 2014; [81 FR 80818](#), Nov. 16, 2016; [85 FR 61568](#), Sept. 29, 2020]

§ 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.” (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 newly constructed or rehabilitated housing, the housing is developed under an Agreement 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.

(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.*

(1) If a PHA decides to operate a PBV program, the PHA's PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA's voucher ACC. This pool of funding is used to pay housing assistance for both tenant-based and project-based voucher units and to pay PHA administrative fees for administration of tenant-based and project-based voucher assistance.

(2) There is no special or additional funding for project-based vouchers. HUD does not reserve additional units for project-based vouchers and does not provide any additional funding for this purpose.

(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, in accordance with [§ 983.6\(d\)](#).

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36165](#), June 25, 2014]

§ 983.6 Maximum amount of PBV assistance.

- (a) The PHA may select owner proposals to provide project-based assistance for up to 20 percent of the amount of budget authority allocated to the PHA by HUD in the PHA voucher program. PHAs are not required to reduce the number of PBV units selected under an Agreement or HAP contract if the amount of budget authority is subsequently reduced.
- (b) 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) 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) Before a PHA issues a Request for Proposals in accordance with [§ 983.51\(b\)\(1\)](#) or makes a selection in accordance with [§ 983.51\(b\)\(2\)](#), the PHA must submit the following information to a HUD field office for review:
 - (1) The total amount of annual budget authority;
 - (2) The percentage of annual budget authority available to be project-based; and
 - (3) The total amount of annual budget authority the PHA is planning to project-base pursuant to the selection and the number of units that such budget authority will support.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36165](#), June 25, 2014]

§ 983.7 Uniform Relocation Act.

(a) Relocation assistance for displaced person.

- (1) A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) ([42 U.S.C. 4201-4655](#)) and implementing regulations at [49 CFR part 24](#).
- (2) The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Relocation costs may not be paid from voucher program funds; however, provided payment of relocation benefits is consistent with state and local law, PHAs may use their administrative fee reserve to pay for relocation assistance after all other program administrative expenses are satisfied. Use of the administrative fee reserve in this manner must be consistent with legal and regulatory

requirements, including the requirements of [24 CFR 982.155](#) and other official HUD issuances.

(b) ***Real property acquisition requirements.*** The acquisition of real property for a PBV project is subject to the URA and [49 CFR part 24, subpart B](#).

(c) ***Responsibility of PHA.*** The PHA must require the owner to comply with the URA and [49 CFR part 24](#).

(d) ***Definition of initiation of negotiations.*** In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the PHA.

§ 983.8 Equal opportunity requirements.

(a) The PBV program requires compliance with all equal opportunity requirements under federal law and regulation, including the authorities cited at [24 CFR 5.105\(a\)](#).

(b) The PHA must comply with the PHA Plan civil rights and affirmatively furthering fair housing certification submitted by the PHA in accordance with [24 CFR 903.7\(o\)](#).

§ 983.9 Special housing types.

(a) ***Applicability.***

(1) For applicability of rules on special housing types at [24 CFR part 982, subpart M](#), see [§ 983.2](#).

(2) In the PBV program, the PHA may not provide assistance for shared housing, manufactured home space rental, or the homeownership option.

(b) ***Group homes.*** A group home may include one or more group home units. A separate lease is executed for each elderly person or person with disabilities who resides in a group home.

(c) ***Cooperative housing.***

(1) ***Applicability of part 983.*** Except as provided in [paragraph \(c\)\(3\)](#) of this section, assistance under this housing type is subject to the regulations of part 983, except the following sections of part 983, subpart F: [§§ 983.256\(b\)](#) and [\(c\)](#), [983.258](#) and [983.259](#) do not apply.

(2) ***Applicability of part 982.***

(i) Cooperative housing under the PBV program is also subject to the requirements of [24 CFR 982.619\(b\)\(2\)](#), [\(b\)\(3\)](#), [\(b\)\(5\)](#), [\(d\)](#), and [\(e\)](#).

(ii) Cooperative housing under the PBV program is not subject to the requirements of [24 CFR 982.619\(a\)](#), [\(b\)\(1\)](#), [\(b\)\(4\)](#), and [\(c\)](#).

(3) ***Assistance in cooperative housing.*** Rental assistance for PBV cooperative housing where families lease cooperative housing units from cooperative members is not a special housing type and all requirements of [24 CFR 983](#) apply.

(4) ***Rent to owner.*** The regulations of [24 CFR part 983, subpart G](#), apply to PBV housing under [paragraph \(c\)](#) of this section. The reasonable rent for a cooperative unit is determined in accordance with [§ 983.303](#). For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(5) ***Other fees and charges.*** Fees such as application fees, credit report fees, and transfer fees shall not be included in the rent to owner.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36165](#), June 25, 2014]

§ 983.10 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.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36166](#), June 25, 2014]

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 ([§§ 983.53](#) and [983.54](#)), complies with the cap on the number of PBV units per project ([§ 983.56](#)), and meets the site selection standards ([§ 983.57](#)).

(b) ***Selection of PBV proposals.*** The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

(1) PHA request for PBV Proposals. The PHA 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) ***Selection based on previous competition.*** The PHA may select, without 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, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

(c) ***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.

(d) ***PHA notice of owner selection.*** The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

(e) ***PHA-owned units.*** A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process 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.

(f) **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.

(g) Owner proposal selection does not require submission of form HUD-2530 or other HUD previous participation clearance.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36166](#), June 25, 2014]

§ 983.52 Housing type.

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement.

(a) **Existing housing** - A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection the units substantially comply with HQS.

(1) Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the AHAP 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.

(b) [Subpart D of this part](#) applies to newly constructed and rehabilitated housing.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36166](#), June 25, 2014]

§ 983.53 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.*** The PHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced as defined in [§ 983.152](#) after proposal submission and prior to execution of an AHAP.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36166](#), June 25, 2014]

§ 983.54 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).

§ 983.55 Prohibition of excess public assistance.

- (a) ***Subsidy layering requirements.*** The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations ([24 CFR 4.13](#)) and other requirements. 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. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.
- (b) ***When subsidy layering review is conducted.*** The PHA may not enter into an Agreement or HAP contract 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.
- (c) ***Owner certification.*** 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.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36166](#), June 25, 2014]

§ 983.56 Cap on number of PBV units in each project.

(a) **25 percent per project cap.** Except as provided in [paragraph \(b\)](#) of this section, the PHA may not select a proposal to provide PBV assistance for units in a project or enter into an Agreement or HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.

(b) **Exception to 25 percent per building cap -**

(1) **When PBV units are not counted against cap.** In the following cases, PBV units are not counted against the 25 percent per project cap:

- (i) Units in a single-family building;
- (ii) Excepted units in a multifamily project.

(2) **Terms**

(i) “Excepted units” means units in a multifamily project that are specifically made available for qualifying families.

(ii) “Qualifying families” means:

(A) Elderly and/or disabled families; and/or

(B) Families receiving supportive services. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the PHA administrative plan, the PHA will take the actions provided under [§ 983.262\(d\)](#), and the owner may terminate the lease in accordance with [§ 983.257\(c\)](#). Also, at the time of initial lease execution between the family and the owner,

the family and the PHA must sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require the PHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

(C) The PHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The PHA administrative plan must state the form and frequency of such monitoring.

(3) ***Combining exception categories.*** Exception categories in a multifamily housing project may be combined.

(4) ***Set-aside for qualifying families.***

(i) In leasing units in a multifamily project pursuant to the PBV HAP, the owner must set aside the number of excepted units made available for occupancy by qualifying families.

(ii) The PHA may refer only qualifying families for occupancy of excepted units.

(c) ***Additional, local requirements promoting partially assisted projects.*** A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. For example, a PHA may:

(1) Establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building,

(2) Determine not to provide PBV assistance for excepted units, or

(3) Establish a per-project cap of less than 25 percent.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36167](#), June 25, 2014]

§ 983.57 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 meet 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 [paragraph \(e\)\(3\)\(iii\)](#), [\(iv\)](#), and [\(v\)](#) 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.

§ 983.58 Environmental review.

(a) ***HUD environmental regulations.*** Activities under the PBV program are subject to HUD environmental regulations in [24 CFR parts 50](#) and [58](#).

(b) ***Who performs the environmental review?***

(1) 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](#).

(2) If a PHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself ([24 CFR 58.11](#)). [24 CFR part 50](#) governs HUD performance of the review.

(c) ***Existing housing.*** In the case of existing housing under this part 983, the RE that is responsible for the environmental review under [24 CFR part 58](#) must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in [24 CFR 58.5](#).

(d) ***Limitations on actions before completion of the environmental review.***

(1) The PHA may not enter into an Agreement or HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

(i) The responsible entity has completed the environmental review procedures required by [24 CFR part 58](#), and HUD has approved the environmental certification and HUD has given a release of funds, as defined in [§ 983.3\(b\)](#);

(ii) 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\(b\)](#); or

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

(2) HUD will not approve the release of funds for PBV assistance under this part if the PHA, the owner, or any other party commits funds (*i.e.*, enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before the PHA submits and HUD approves its request for release of funds (where such submission is required).

(e) ***PHA duty to supply information.*** 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.

(f) ***Mitigating measures.*** The PHA must require the owner to carry out mitigating measures required by the RE (or HUD, if applicable) as a result of the environmental review.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36167](#), June 25, 2014]

§ 983.59 PHA-owned units.

(a) ***Selection of PHA-owned units.*** The selection of PHA-owned units must be done in accordance with [§ 983.51\(e\)](#).

(b) ***Inspection and determination of reasonable rent by independent entity.*** In the case of PHA-owned units, the following program services may not be performed by the PHA, but must be performed instead by an independent entity approved by HUD.

(1) ***Determination of rent to owner for the PHA-owned units.*** Rent to owner for PHA-owned units is determined pursuant to [§§ 983.301](#) through [983.305](#) in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on PBV program requirements;

(2) ***Initial and renewal HAP contract term.*** The term of the HAP contract and any HAP contract renewal for PHA-owned units must be agreed upon by the PHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the PHA; and

(3) Inspection of PHA-owned units as required by [§ 983.103\(f\)](#).

(c) ***Nature of independent entity.*** The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

(d) ***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.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36167](#), June 25, 2014]

Subpart C - Dwelling Units

§ 983.101 Housing quality standards.

(a) ***HQS applicability.*** Except as otherwise provided in this section, [24 CFR 982.401](#) (housing quality standards) applies to the PBV program. The physical condition standards at [24 CFR 5.703](#) do not apply to the PBV program.

(b) ***HQS for special housing types.*** For special housing types assisted under the PBV program, HQS in [24 CFR part 982](#) apply to the PBV program. (Shared housing, manufactured home

space rental, and the homeownership option are not assisted under the PBV program.) HQS contained within [24 CFR part 982](#) that are inapplicable to the PBV program pursuant to [§ 983.2](#) are also inapplicable to special housing types under the PBV program.

(c) ***Lead-based paint requirements.***

(1) The lead-based paint requirements at [§ 982.401\(j\) of this chapter](#) do not apply to the PBV program.

(2) 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.

(d) ***HQS enforcement.*** [Parts 982 and 983 of this chapter](#) 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.

(e) ***Additional PHA quality and design requirements.*** This section establishes the minimum federal housing quality standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36167](#), June 25, 2014]

[§ 983.102 Housing accessibility for persons with disabilities.](#)

(a) ***Program accessibility.*** The housing must 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 PHA shall ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)), as implemented by HUD's regulations at [24 CFR part 8, subpart C](#).

(b) ***Design and construction.*** Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at [24 CFR 100.205](#), as applicable.

[§ 983.103 Inspecting units.](#)

(a) ***Pre-selection inspection -***

(1) ***Inspection of site.*** The PHA must examine the proposed site before the proposal selection date.

(2) ***Inspection of existing units.*** If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with the HQS. To qualify as existing housing, units must substantially comply with the HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with the HQS.

(b) ***Pre-HAP contract inspections.*** The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with the HQS.

(c) ***Turnover inspections.*** Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with the HQS.

(d) ***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 the 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](#).

(e) ***Other inspections.***

(1) The PHA must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

(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.

(f) ***Inspecting PHA-owned units.***

(1) In the case of PHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance with [§ 983.59](#), rather than by the PHA.

(2) The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located.

(3) The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA owner.

(g) **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\(a\)](#).

[[70 FR 59913](#), Oct. 13, 2005, as amended at [81 FR 12377](#), Mar. 8, 2016]

Subpart D - Requirements for Rehabilitated and Newly Constructed Units

§ 983.151 Applicability.

This Subpart D applies to PBV assistance for newly constructed or rehabilitated housing. This Subpart D does not apply to PBV assistance for existing housing. Housing selected under this subpart cannot be selected as existing housing, as defined in [§ 983.52](#), at a later date.

§ 983.152 Purpose and content of the Agreement to enter into HAP contract.

(a) **Purpose of Agreement.** In the Agreement the owner agrees to develop the contract units to comply with the HQS, and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units.

(b) **Requirement.** The PHA must enter into an Agreement with the owner at such time as provided in [§ 983.153](#). The Agreement must be in the form required by HUD headquarters (see [24 CFR 982.162](#)).

(c) **Commencement of construction or rehabilitation.** The PHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission.

(1) Construction begins when excavation or site preparation (including clearing of the land) begins for the housing;

(2) Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

(d) *Description of housing.*

(1) At a minimum, the Agreement must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

(i) Site;

(ii) Location of contract units on site;

(iii) Number of contract units by area (size) and number of bedrooms and bathrooms;

(iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

(v) Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;

(vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at [24 CFR 100.205](#) and 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](#) apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement, as specified in [paragraph \(c\)\(i\)\(viii\)](#) of this section.

(vii) Estimated initial rents to owner for the contract units;

(viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications.

(2) At a minimum, the housing must comply with the HQS. The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.

§ 983.153 When Agreement is executed.

The agreement must be promptly executed, in accordance with the following conditions:

- (a) ***Prohibition of excess subsidy.*** The PHA may not enter the Agreement with the owner until the subsidy layering review is completed (see [§ 983.55](#)).
- (b) ***Environmental approval.*** The PHA may not enter the Agreement with the owner until the environmental review is completed and the PHA has received the environmental approval (see [§ 983.58](#)).
- (c) ***Prohibition on construction or rehabilitation.*** The PHA shall not enter into the Agreement with the owner if construction or rehabilitation has commenced after proposal submission.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36167](#), June 25, 2014]

§ 983.154 Conduct of development work.

- (a) ***Development requirements.*** The owner must carry out development work in accordance with the Agreement and the requirements of this section.
- (b) ***Labor standards.***
 - (1) In the case of an Agreement for development of 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.
 - (2) The HUD prescribed form of Agreement shall include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.
 - (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.
- (c) ***Equal employment opportunity.*** The owner must comply with 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).
- (d) ***Eligibility to participate in federal programs and activities.*** The Agreement and HAP contract shall 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 the U.S. General Services Administration list of parties excluded from federal procurement and nonprocurement programs.

(e) ***Disclosure of conflict of interest.*** The owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [85 FR 61568](#), Sept. 29, 2020]

§ 983.155 Completion of housing.

(a) ***Completion deadline.*** The owner must develop and complete the housing in accordance with the Agreement. The Agreement must specify the deadlines for completion of the housing and for submission by the owner of the required evidence of completion.

(b) ***Required evidence of completion -***

(1) ***Minimum submission.*** At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

(i) Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement; and

(ii) Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

(2) ***Additional documentation.*** At the discretion of the PHA, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion. For example, such documentation may include:

(i) A certificate of occupancy or other evidence that the units comply with local requirements (such as code and zoning requirements); and

(ii) An architect's certification that the housing complies with:

(A) HUD housing quality standards;

(B) State, local, or other building codes;

(C) Zoning;

(D) The rehabilitation work write-up (for rehabilitated housing) or the work description (for newly constructed housing); or

(E) Any additional design or quality requirements pursuant to the Agreement.

§ 983.156 PHA acceptance of completed units.

(a) ***PHA determination of completion.*** When the PHA has received owner notice that the housing is completed:

(1) The PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirement imposed by the PHA under the Agreement.

(2) The PHA must determine if the owner has submitted all required evidence of completion.

(3) If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

(b) ***Execution of HAP contract.*** If the PHA determines that the housing has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

§ 983.157 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by [24 CFR 5.100](#), of a building with more than 4 rental units and where the date of the notice of owner proposal selection or the start of the rehabilitation while under a HAP contract is after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in [24 CFR 5.100](#), except where the owner determines and documents the determination that:

(a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(b) 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

(c) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

[[81 FR 92639](#), Dec. 20, 2016]

Subpart E - Housing Assistance Payments Contract

§ 983.201 Applicability.

Subpart E applies to all PBV assistance under part 983 (including assistance for existing, newly constructed, or rehabilitated housing).

§ 983.202 Purpose of HAP contract.

(a) **Requirement.** The PHA must enter into a HAP contract with the owner. With the exception of single family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. The HAP contract must be in such form as may be prescribed by HUD.

(b) ***Purpose of HAP contract.***

(1) The purpose of the HAP contract is to provide housing assistance payments for eligible families.

(2) The PHA makes housing assistance payments to the owner in accordance with the HAP contract. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36167](#), June 25, 2014]

§ 983.203 HAP contract information.

The HAP contract must specify:

(a) The total number of contract units by number of bedrooms;

(b) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

(c) Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

(d) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;

(e) 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;

(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](#);

(g) The HAP contract term;

(h) The number of units in any project that will exceed the 25 percent per-project cap (as described in [§ 983.56](#)), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

- (i) The initial rent to owner (for the first 12 months of the HAP contract term).

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36167](#), June 25, 2014]

§ 983.204 When HAP contract is executed.

(a) *PHA inspection of housing.*

- (1) Before execution of the HAP contract, the PHA must inspect each contract unit in accordance with [§ 983.103\(b\)](#).
- (2) The PHA may not enter into a HAP contract for any contract unit until the PHA has determined that the unit complies with the HQS.

(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 inspection of the housing.

(c) *Newly constructed or rehabilitated housing.*

- (1) In the case of newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion (see [§§ 983.155](#) and [983.156](#)).
- (2) In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement. Completion of the units by the owner and acceptance of units by the PHA is subject to the provisions of the Agreement.

§ 983.205 Term of HAP contract.

(a) ***15-year initial term.*** The PHA may enter into a HAP contract with an owner for an initial term of up to 15 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 15 years. In the case of PHA-owned units, the term of the initial HAP contract shall be determined in accordance with [§ 983.59](#).

(b) ***Extension of term.*** A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. A PHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing

opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with [§ 983.59](#).

(c) ***Termination by PHA - insufficient funding.***

(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 or by the PHA in accordance with HUD instructions. 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.

(2) The availability of sufficient funding must be determined by HUD or by the PHA in accordance with HUD instructions. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by the PHA shall be implemented in accordance with HUD instructions.

(d) ***Termination by owner - reduction below initial rent.*** The owner may terminate the HAP contract, upon notice to the PHA, 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 (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36168](#), June 25, 2014]

§ 983.206 Statutory notice requirements: Contract termination or expiration.

(a) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(b) 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.

(c) For purposes of this section, the term “termination” means the expiration of the HAP contract or an owner's refusal to renew the HAP contract.

(d)

(1) If an owner does not give timely notice of termination, 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.

(2) An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

[[79 FR 36168](#), June 25, 2014]

§ 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 building for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit 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 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with [§ 983.56\(b\)](#)), or the 20 percent of authorized budget authority as provided in [§ 983.6](#), a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. 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.

(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.

[[70 FR 59913](#), Oct. 13, 2005. Redesignated and amended at [79 FR 36168](#), June 25, 2014]

§ 983.208 Condition of contract units.

(a) ***Owner maintenance and operation.***

(1) The owner must maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance.

(2) The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family.

(3) At the discretion of the PHA, the HAP contract may also require continuing owner compliance during the HAP term with additional housing quality requirements specified by the PHA (in addition to, but not in place of, compliance with the HUD-prescribed HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified in the Agreement.

(b) *Remedies for HQS violation.*

(1) The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. 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 the HQS.

(2) If the PHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the PHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

(c) *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.

[[70 FR 59913](#), Oct. 13, 2005. Redesignated at [79 FR 36168](#), June 25, 2014]

§ 983.209 Owner responsibilities.

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. [24 CFR 982.452](#) (Owner responsibilities) applies.

[[70 FR 59913](#), Oct. 13, 2005. Redesignated at [79 FR 36168](#), June 25, 2014]

§ 983.210 Owner certification.

By execution of the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract:

(a) All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.

- (b) The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.
- (c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements.
- (d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
- (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.
- (f) The amount of the housing assistance payment is the correct amount due under the HAP contract.
- (g) The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
- (h) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.
- (i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.
- (j) Repair work on a 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 in compliance with Davis-Bacon wage requirements.

[[70 FR 59913](#), Oct. 13, 2005. Redesignated and amended at [79 FR 36168](#), June 25, 2014]

§ 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.
- (b) If the project is fully assisted, a PHA may reinstate the unit removed under [paragraph \(a\)](#) of this section to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, a PHA may substitute a different unit for the unit removed under [paragraph \(a\)](#) of this section to the HAP contract when the first eligible substitute becomes available.

(c) A reinstatement or substitution of units under the HAP contract, in accordance with [paragraph \(b\)](#) of this section, must be permissible under § 983.207. The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. The PHA must refer eligible families to the owner in accordance with the PHA's selection policies.

[[79 FR 36168](#), June 25, 2014]

Subpart F - Occupancy

§ 983.251 How participants are selected.

(a) ***Who may receive PBV assistance?***

(1) The PHA may select families who are participants in the PHA's tenant-based voucher program and families who have applied for admission to the voucher program.

(2) Except for voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission at commencement of PBV assistance.

(3) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in [24 CFR part 5, subpart L](#), apply to admission to the project-based program.

(4) A PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

(b) ***Protection of in-place families.***

(1) The term “in-place family” means an eligible family residing in a proposed contract unit on the proposal selection date.

(2) In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA's waiting list (if the family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. (However, the PHA may deny assistance for the grounds specified in [24 CFR 982.552](#) and [982.553](#).) Admission of such families is not subject to income-targeting under [24 CFR 982.201\(b\)\(2\)\(i\)](#), and such families must be referred to the owner from the PHA's waiting list. A PHA shall give such families priority for admission to the PBV program. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

(c) ***Selection from PHA waiting list.***

(1) Applicants who will occupy PBV units must be selected by the PHA from the PHA waiting list. The PHA must select applicants from the waiting list in accordance with the policies in the PHA administrative plan.

(2) The PHA may use a separate waiting list for admission to PBV units or may use the same waiting list for both tenant-based assistance and PBV assistance. If the PHA chooses to use a separate waiting list for admission to PBV units, 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.

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

(4) The PHA may merge the waiting list for PBV assistance with the PHA waiting list for admission to another assisted housing program.

(5) The PHA may place families referred by the PBV owner on its PBV waiting list.

(6) 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 for such programs.

(7) In selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer families who require such accessibility features to the owner (see [24 CFR 8.26](#) and [100.202](#)).

(d) ***Preference for services offered.*** In selecting families, PHAs may give preference to disabled families who need services offered at a particular project in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at [24 CFR 982.207\(b\)\(3\)](#) continues to apply.

(1) ***Preference limits.***

(i) The preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;

(ii) Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and

(iii) For whom such services cannot be provided in a nonsegregated setting.

(2) Disabled residents 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 project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

(e) ***Offer of PBV assistance.***

(1) If a family refuses the PHA's offer of PBV assistance, such refusal does not affect the family's position on the PHA waiting list for tenant-based assistance.

(2) If a PBV owner rejects a family for admission to the owner's PBV units, such rejection by the owner does not affect the family's position on the PHA waiting list for tenant-based assistance.

(3) The PHA may not take any of the following actions 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;

(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 under the PHA selection policy;

(iv) Remove the applicant from the waiting list for tenant-based voucher assistance.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [73 FR 72345](#), Nov. 28, 2008; [75 FR 66264](#), Oct. 27, 2010; [79 FR 36168](#), June 25, 2014; [81 FR 80818](#), Nov. 16, 2016]

§ 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; and

(2) Family and owner responsibilities.

(b) ***Information packet.*** The PHA must give the family a packet that includes information on the following subjects:

(1) How the PHA determines the total tenant payment for a family;

(2) Family obligations under the program; and

(3) Applicable fair housing information.

(c) ***Providing information for persons with disabilities.***

(1) If the family head or spouse is a disabled person, the PHA must take appropriate steps to assure effective communication, in accordance with [24 CFR 8.6](#), 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 mobility 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 and Executive Order 13166.

§ 983.253 Leasing of contract units.

(a) ***Owner selection of tenants.***

(1) During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by the PHA from the PHA waiting list.

(2) The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.

(3) An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

(4) The owner must comply with [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(b) ***Size of unit.*** The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards.

(c) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in [24 CFR part 5, subpart L](#), apply to tenant screening.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [81 FR 80818](#), Nov. 16, 2016]

§ 983.254 Vacancies.

(a) ***Filling vacant units.***

(1) The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, the PHA must 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 eligible families on the PHA waiting list referred by the PHA.

(3) The PHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

(b) ***Reducing number of contract units.*** If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the PHA 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.

§ 983.255 Tenant screening.

(a) ***PHA option.***

(1) The PHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny admission to an applicant based on such screening.

(2) The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(b) ***Owner responsibility.***

(1) The owner is responsible for screening and selection of the family to occupy the owner's unit.

(2) The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and

(v) Compliance with other essential conditions of tenancy;

(c) ***Providing tenant information to owner.***

(1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

(ii) The name and address (if known to the PHA) of the landlord at the family's current and any prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members.

(3) The PHA must give the family a description of the PHA policy on providing information to owners.

(4) The PHA policy must provide that the PHA will give the same types of information to all owners.

(d) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in [24 CFR part 5, subpart L](#), apply to tenant screening.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [73 FR 72345](#), Nov. 28, 2008; [75 FR 66264](#), Oct. 27, 2010; [81 FR 80818](#), Nov. 16, 2016]

§ 983.256 Lease.

(a) ***Tenant's legal capacity.*** The tenant must have legal capacity to enter a lease under state and local law. "Legal capacity" means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) ***Form of lease.***

(1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, except as provided in [paragraph \(b\)\(4\)](#) of this section. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

(3) In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

(4) The PHA may review the owner's lease form to determine if the lease complies with state and local law. The PHA may decline to approve the tenancy if the PHA determines that the lease does not comply with state or local law.

(c) ***Required information.*** The lease must specify all of the following:

- (1) The names of the owner and the tenant;
- (2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- (3) The term of the lease (initial term and any provision for renewal);
- (4) The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;
- (5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and
- (6) The amount of any charges for food, furniture, or supportive services.

(d) ***Tenancy addendum.***

- (1) The tenancy addendum in the lease shall state:
 - (i) The program tenancy requirements (as specified in this part);
 - (ii) The composition of the household as approved by the PHA (names of family members and any PHA-approved live-in aide).
- (2) All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum shall prevail over other provisions of the lease.

(e) ***Changes in lease.***

- (1) If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give the PHA a copy of all such changes.
- (2) The owner must notify the PHA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with [§ 983.303\(c\)](#), based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent shall be used in calculation of rent to owner from the effective date of the change.

(f) ***Term of lease.***

- (1) The initial lease term must be for at least one year.
- (2) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:
 - (i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or
 - (ii) For automatic indefinite extension of the lease term.
- (3) The term of the lease terminates if any of the following occurs:
 - (i) The owner terminates the lease for good cause;
 - (ii) The tenant terminates the lease;
 - (iii) The owner and the tenant agree to terminate the lease;
 - (iv) The PHA terminates the HAP contract; or
 - (v) The PHA terminates assistance for the family.

(g) ***Lease provisions governing absence from the unit.*** The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination-of-assistance actions due to family absence from the unit are subject to [24 CFR 982.312](#), except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.)

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36168](#), June 25, 2014]

§ 983.257 Owner termination of tenancy and eviction.

- (a) In general. [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.
- (b) If a family resides in a project-based unit excepted from the 25 percent per-project cap on project-basing because of participation in an FSS or other supportive services program, and the family fails without good cause to complete its FSS contract of participation or supportive services requirement, such failure is grounds for lease termination by the owner.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [73 FR 72345](#), Nov. 28, 2008; [75 FR 66265](#), Oct. 27, 2010; [79 FR 36169](#), June 25, 2014; [81 FR 80818](#), Nov. 16, 2016]

§ 983.258 Continuation of housing assistance payments.

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to [§ 983.211](#).

[[79 FR 36169](#), June 25, 2014]

§ 983.259 Security deposit: amounts owed by tenant.

- (a) The owner may collect a security deposit from the tenant.
- (b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.
- (c) 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) 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) 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.

[[70 FR 59913](#), Oct. 13, 2005. Redesignated at [79 FR 36169](#), June 25, 2014]

§ 983.260 Overcrowded, under-occupied, and accessible units.

(a) ***Family occupancy of wrong-size or accessible unit.*** The PHA subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a:

- (1) Wrong-size unit, or

(2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must promptly notify the family and the owner of this determination, and of the PHA's offer of continued assistance in another unit pursuant to [paragraph \(b\)](#) of this section.

(b) *PHA offer of continued assistance.*

(1) If a family is occupying a:

(i) Wrong-size unit, or

(ii) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

(2) The PHA policy on such continued housing assistance must be stated in the administrative plan and may be in the form of:

(i) Project-based voucher assistance in an appropriate-size unit (in the same project or in another project);

(ii) Other project-based housing assistance (*e.g.*, by occupancy of a public housing unit);

(iii) Tenant-based rental assistance under the voucher program; or

(iv) Other comparable 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, 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. 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 the opportunity for another form of continued housing assistance in accordance with [paragraph \(b\)\(2\)](#) of this section (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the PHA, and remove the unit from the HAP contract.

§ 983.261 Family right to move.

(a) The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

(b) If the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

(c) Before providing notice to terminate the lease under [paragraph \(a\)](#) of this section, a family must contact the PHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

(1) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in [24 CFR part 5, subpart L](#), and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

(2) If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in [24 CFR part 5, subpart L](#), [the](#) PHA may offer the victim the opportunity for continued tenant-based rental assistance.

(d) If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.

[[70 FR 59913](#), Oct. 13, 2005. Redesignated at [79 FR 36169](#), June 25, 2014; [81 FR 80818](#), Nov. 16, 2016]

§ 983.262 When occupancy may exceed 25 percent cap on the number of PBV units in each project.

(a) Except as provided in [§ 983.56\(b\)](#), the PHA may not pay housing assistance under the HAP contract for contract units in excess of the 25 percent cap pursuant to [§ 983.56\(a\)](#).

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

(c) If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received FSS supportive services or any other service as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

(d) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status where the PHA does not exercise its discretion under [paragraph \(e\)](#) of this section) must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project in accordance with [§ 983.207\(a\)](#); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

(e) The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled 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. 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 qualifying family.

[[70 FR 59913](#), Oct. 13, 2005. Redesignated and amended at [79 FR 36169](#), June 25, 2014]

Subpart G - Rent to Owner

§ 983.301 Determining the rent to owner.

(a) Initial and redetermined rents.

(1) The amount of the initial and redetermined rent to owner is determined in accordance with this section and [§ 983.302](#).

(2) The amount of the initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

(3) The rent to owner is also redetermined in accordance with [§ 983.302](#).

(b) ***Amount of rent to owner.*** Except for certain tax credit units as provided in [paragraph \(c\)](#) of this section, the rent to owner must not exceed the lowest of:

(1) An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner.

(c) ***Rent to owner for certain tax credit units.***

(1) This [paragraph \(c\)](#) applies if:

(i) A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986 (see [26 U.S.C. 42](#));

(ii) The contract unit is not located in a qualified census tract;

(iii) In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

(iv) The tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with [paragraph \(b\)](#) of this section.

(2) In the case of a contract unit described in [paragraph \(c\)\(1\)](#) of this section, the rent to owner must not exceed the lowest of:

(i) The tax credit rent minus any utility allowance;

(ii) The reasonable rent; or

(iii) The rent requested by the owner.

(3) The “tax credit rent” is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any

additional rental assistance (*e.g.*, additional assistance such as tenant-based voucher assistance).

(4) A “qualified census tract” is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which:

(i) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or

(ii) Where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

(d) ***Rent to owner for other tax credit units.*** Except in the case of a tax-credit unit described in [paragraph \(c\)\(1\)](#) of this section, the rent to owner for all other tax credit units may be determined by the PHA pursuant to [paragraph \(b\)](#) of this section.

(e) ***Reasonable rent.*** The PHA shall determine the reasonable rent in accordance with [§ 983.303](#). The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

(f) ***Use of FMRs and utility allowance schedule in determining the amount of rent to owner -***

(1) ***Amounts used.***

(i) ***Determination of initial rent (at beginning of HAP contract term).*** 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.

(ii) ***Redetermination of rent to owner.*** 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.

(2) ***Exception payment standard and PHA utility allowance schedule.***

(i) 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 exception payment standard amount for use in the PBV program.

(ii) The PHA may not establish or apply different utility allowance amounts for the PBV program. The same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

(g) **PHA-owned units.** For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with [§ 983.59](#). The PHA must use the rent to owner established by the independent entity.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36169](#), June 25, 2014; [81 FR 80583](#), Nov. 16, 2016]

§ 983.302 Redetermination of rent to owner.

(a) 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) The PHA may not make any rent increase other than an increase in the rent to owner as determined pursuant to § 983.301. (Provisions for special adjustments of contract rent pursuant to [42 U.S.C. 1437f\(b\)\(2\)\(B\)](#) do not apply to the voucher program.)

(2) The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the PHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the PHA. The request must be submitted in the form and manner required by the PHA.

(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 owner requested a rent adjustment.

(2) If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, 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 [§ 983.55](#); 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 rent redetermination.** Rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent (as determined in accordance with [§§ 983.301](#) and [983.302](#)). The PHA notice of the rent adjustment 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.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36170](#), June 25, 2014; [81 FR 80583](#), Nov. 16, 2016]

§ 983.303 Reasonable rent.

- (a) **Comparability requirement.** At all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the PHA, except that where the PHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with [§ 983.302\(e\)\(2\)](#).
- (b) **Redetermination.** The PHA must redetermine the reasonable rent:
- (1) Whenever there is a 10 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect 1 year before the contract anniversary.
 - (2) Whenever the PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;

(3) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and

(4) Whenever there is any other change that may substantially affect the reasonable rent.

(c) ***How to determine reasonable rent.***

(1) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

(2) In determining the reasonable rent, the PHA must consider factors that affect market rent, such as:

(i) The location, quality, size, unit type, and age of the contract unit; and

(ii) Amenities, housing services, maintenance, and utilities to be provided by the owner.

(d) ***Comparability analysis.***

(1) For each unit, the PHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.

(2) The PHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(3) The comparability analysis may be performed by PHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any PHA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

(e) ***Owner certification of comparability.*** By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

(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 agency approved by HUD in accordance with [§ 983.59](#), 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 and to the HUD field office where the project is located.

[[70 FR 59913](#), Oct. 13, 2005, as amended at [79 FR 36170](#), June 25, 2014; [81 FR 80583](#), Nov. 16, 2016]

§ 983.304 Other subsidy: effect on rent to owner.

(a) **General.** In addition to the rent limits established in accordance with [§ 983.301](#) and [24 CFR 982.302](#), the following restrictions apply to certain units.

(b) **HOME.** For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program ([24 CFR 92.252](#)).

(c) **Subsidized projects.**

(1) This [paragraph \(c\)](#) applies to any contract units in any of the following types of federally subsidized project:

- (i) An insured or non-insured Section 236 project;
- (ii) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- (iii) A Section 221(d)(3) below market interest rate (BMIR) project;
- (iv) A Section 515 project of the Rural Housing Service;
- (v) Any other type of federally subsidized project specified by HUD.

(2) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in [paragraph \(c\)\(1\)](#) of this section.

(d) **Combining subsidy.** Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See [§ 983.55](#).

(e) **Other subsidy: rent reduction.** To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.

(f) **Prohibition of other subsidy.** For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see [§ 983.54](#).

[[70 FR 59913](#), Oct. 13, 2005, as amended at [72 FR 65207](#), Nov. 19, 2007; [79 FR 36170](#), June 25, 2014]

§ 983.305 Rent to owner: effect of rent control and other rent limits.

In addition to the limitation to 110 percent of the FMR in [§ 983.301\(b\)\(1\)](#), the rent reasonableness limit under [§§ 983.301\(b\)\(2\)](#) and [983.303](#), the rental determination provisions of [§ 983.301\(f\)](#), the special limitations for tax credit units under [§ 983.301\(c\)](#), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

Subpart H - Payment to Owner

§ 983.351 PHA payment to owner for occupied unit.

(a) ***When payments are made.***

(1) During the term of the HAP contract, the PHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family.

(2) Except for discretionary vacancy payments in accordance with [§ 983.352](#), the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

(b) ***Monthly payment.*** Each month, the PHA shall make a housing assistance payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

(c) ***Calculating amount of payment.*** The monthly housing assistance payment by the PHA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

(d) ***Prompt payment.*** The housing assistance payment by the PHA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

(e) ***Owner compliance with contract.*** To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

§ 983.352 Vacancy payment.

(a) ***Payment for move-out month.*** If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out (“move-out month”). However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

(b) ***Vacancy payment at PHA discretion.***

(1) At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with [paragraph \(b\)\(2\)](#) of this section) for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

(2) The vacancy payment to the owner for each month of the maximum two-month period will be determined by the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

(3) The PHA may make vacancy payments to the owner only if:

(i) The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief);

(ii) The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;

(iii) The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and

(iv) The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

(4) The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

§ 983.353 Tenant rent; payment to owner.

(a) ***PHA determination.***

(1) The tenant rent is the portion of the rent to owner paid by the family. The PHA determines the tenant rent in accordance with HUD requirements.

(2) Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.

(b) *Tenant payment to owner.*

(1) The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).

(2) The amount of the tenant rent as determined by the PHA is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease.

(3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

(4) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.

(c) *Limit of PHA responsibility.*

(1) The PHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.

(2) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. The PHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) *Utility reimbursement.*

(1) If the amount of the utility allowance exceeds the total tenant payment, the PHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities ("utility reimbursement") and the tenant rent to the owner shall be zero.

(2) The PHA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.

(3) If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

§ 983.354 Other fees and charges.

(a) *Meals and supportive services.*

(1) Except as provided in [paragraph \(a\)\(2\)](#) of this section, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(2) In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

(b) *Other charges by owner.* The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

PART 985 - SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

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

Source: [63 FR 48555](#), Sept. 10, 1998, unless otherwise noted.

Subpart A - General

§ 985.1 Purpose and applicability.

(a) **Purpose.** The Section 8 Management Assessment Program (SEMAP) is designed to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost. SEMAP also establishes a system for HUD to measure PHA performance in key Section 8 program areas and to assign performance ratings. SEMAP provides procedures for HUD to identify PHA management capabilities and deficiencies in order to target monitoring and program assistance more effectively. PHAs can use the SEMAP performance analysis to assess and improve their own program operations.

(b) **Applicability.** This rule applies to PHA administration of the tenant-based Section 8 rental voucher and rental certificate programs ([24 CFR part 982](#)), the project-based component (PBC) of the certificate program ([24 CFR part 983](#)) to the extent that PBC 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](#)).

[[63 FR 48555](#), Sept. 10, 1998, as amended at [64 FR 40497](#), July 26, 1999]

§ 985.2 Definitions.

(a) The terms *Department*, *Fair Market Rent*, *HUD*, *Secretary*, and *Section 8*, as used in this part, are defined in [24 CFR 5.100](#).

(b) The definitions in [24 CFR 982.4](#) apply to this part. As used in this part:

Confirmatory review means an on site review performed by HUD to verify the management performance of an PHA.

Corrective action plan means a HUD-required written plan that addresses PHA program management deficiencies or findings identified by HUD through remote monitoring or on-site review, and that will bring the PHA to an acceptable level of performance.

MTCS means Multifamily Tenant Characteristics System. MTCS is the Department's national database on participants and rental units in the Section 8 rental certificate, rental voucher, and moderate rehabilitation programs and in the Public and Indian Housing programs.

PHA means a Housing Agency.

PHA's quality control sample means an annual sample of files or records drawn in an unbiased manner and reviewed by an PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. The minimum size of the PHA's quality control sample is as follows:

Universe	Minimum number of files or records to be sampled
50 or less	5.
51-600	5 plus 1 for each 50 (or part of 50) over 50.
601-2000	16 plus 1 for each 100 (or part of 100) over 600.
Over 2000	30 plus 1 for each 200 (or part of 200) over 2000.

Where the universe is: the number of admissions in the last year for each of the two quality control samples under the SEMAP indicator at [§ 985.3\(a\)](#) Selection from the Waiting List; the number of families assisted for the SEMAP indicators at [§ 985.3\(b\)](#) Reasonable Rent, and [985.3\(c\)](#) Determination of Adjusted Income; the number of units under HAP contract during the last completed PHA fiscal year for the SEMAP indicator at [§ 985.3\(e\)](#) HQS Quality Control Inspections; and the number of failed HQS inspections in the last year for the SEMAP indicator at [§ 985.3\(f\)](#) HQS Enforcement.

Performance indicator means a standard set for a key area of Section 8 program management against which the PHA's performance is measured to show whether the PHA administers the program properly and effectively. (See [§ 985.3.](#))

SEMAP certification means the PHA's annual certification to HUD, on the form prescribed by HUD, concerning its performance in key Section 8 program areas.

SEMAP deficiency means any rating of 0 points on a SEMAP performance indicator.

SEMAP profile means a summary prepared by HUD of an PHA's ratings on each SEMAP indicator, its overall SEMAP score, and its overall performance rating (high performer, standard, troubled).

[[63 FR 48555](#), Sept. 10, 1998, as amended at [64 FR 40497](#), July 26, 1999]

§ 985.3 Indicators, HUD verification methods and ratings.

This section states the performance indicators that are used to assess PHA Section 8 management. HUD will use the verification method identified for each indicator in reviewing the accuracy of an PHA's annual SEMAP certification. HUD will prepare a SEMAP profile for each PHA and will assign a rating for each indicator as shown. If the HUD verification method for the indicator relies on data in MTCS and HUD determines those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator. The method for selecting the PHA's quality control sample under [paragraphs \(a\), \(b\), \(c\) and \(f\)](#) of this section must leave a clear audit trail that can be used to verify that the PHA's quality control sample was drawn in an unbiased manner.

An PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor (IA), will not be rated under the SEMAP indicators in [paragraphs \(a\) through \(g\)](#) of this section for which the annual IA audit report is a HUD verification method. For those PHAs, the SEMAP score and overall performance rating will be determined based only on the remaining indicators in [paragraphs \(i\) through \(o\)](#) of this section as applicable. Although the SEMAP performance rating will not be determined using the indicators in [paragraphs \(a\) through \(g\)](#) of this section, PHAs not subject to Federal audit requirements must still complete the SEMAP certification for these indicators and performance under the indicators is subject to HUD confirmatory reviews.

(a) ***Selection from the waiting list.***

(1) This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list. ([24 CFR 982.54\(d\)\(1\)](#) and [982.204\(a\)](#))

(2) HUD verification method: The independent auditor (IA) annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating:

(i) The PHA's SEMAP certification states that:

(A) The PHA has written waiting list selection policies in its administrative plan and,

(B) Based on the PHA's quality control samples, drawn separately for applicants reaching the top of the waiting list and for admissions, documentation shows that at least 98 percent of the families in both samples of applicants and admissions were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of selection. 15 points.

(ii) The PHA's SEMAP certification does not support the statement in [paragraph \(a\)\(3\)\(i\)](#) of this section. 0 points.

(b) ***Reasonable rent.***

(1) This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units: At the time of initial leasing; if there is any increase in the rent to owner; at the HAP contract anniversary if there is a 10 percent decrease in the published fair market rent (FMR) in effect 60 days before the HAP contract anniversary. The PHA's method must take into consideration the location, size, type, quality and age of the units, and the amenities, housing services, and maintenance and utilities provided by the owners in determining comparability and the reasonable rent. ([24 CFR 982.4](#), [24 CFR 982.54\(d\)\(15\)](#), [982.158\(f\)\(7\)](#) and [982.507](#))

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating:

(i) The PHA's SEMAP certification states that:

(A) The PHA has a reasonable written method to determine reasonable rent which considers location, size, type, quality and age of the units and the amenities, housing services, and maintenance and utilities provided by the owners; and

(B) Based on the PHA's quality control sample of tenant files, the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with [§ 982.507 of this chapter](#) for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 10 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

(ii) The PHA's SEMAP certification includes the statements in [paragraph \(b\)\(3\)\(i\)](#) of this section, except that the PHA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 10 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 15 points.

(iii) The PHA's SEMAP certification does not support the statements in either [paragraph \(b\)\(3\)\(i\)](#) or [\(b\)\(3\)\(ii\)](#) of this section. 0 points.

(c) ***Determination of adjusted income.***

(1) This indicator shows whether, at the time of admission and annual reexamination, the PHA verifies and correctly determines adjusted annual income for each assisted family and, where the family is responsible for utilities under the lease, the PHA uses the appropriate utility allowances for the unit leased in determining the gross rent. ([24 CFR part 5, subpart F](#) and [24 CFR 982.516](#))

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating:

(i) The PHA's SEMAP certification states that, based on the PHA's quality control sample of tenant files, for at least 90 percent of families:

(A) The PHA obtains third party verification of reported family annual income, the value of assets totalling more than \$5,000, expenses related to deductions from annual income, and other factors that affect the determination of adjusted income, and uses the verified information in determining adjusted income, and/or documents tenant files to show why third party verification was not available;

(B) The PHA properly attributes and calculates allowances for any medical, child care, and/or disability assistance expenses; and

(C) The PHA uses the appropriate utility allowances to determine gross rent for the unit leased. 20 points.

(ii) The PHA's SEMAP certification includes the statements in [paragraph \(c\)\(3\)\(i\)](#) of this section, except that the PHA obtains and uses independent verification of income, properly attributes allowances, and uses the appropriate utility allowances for only 80 to 89 percent of families. 15 points.

(iii) The PHA's SEMAP certification does not support the statements in either [paragraph \(c\)\(3\)\(i\)](#) or [\(c\)\(3\)\(ii\)](#) of this section. 0 points.

(d) *Utility Allowance Schedule.*

(1) This indicator shows whether the PHA maintains an up-to-date utility allowance schedule. ([24 CFR 982.517](#))

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating:

(i) The PHA's SEMAP certification states that the PHA reviewed utility rate data within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised. 5 points.

(ii) The PHA's SEMAP certification does not support the statement in [paragraph \(d\)\(3\)\(i\)](#) of this section. 0 points.

(e) *HQS quality control inspections.*

(1) This indicator shows whether an PHA supervisor or other qualified person reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements specified at [§ 985.2](#) under PHA's quality control sample, for quality control of HQS inspections. The PHA supervisor's reinspected sample is to be drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding reinspection) and is to be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. ([24 CFR 982.405\(b\)](#))

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating:

(i) The PHA's SEMAP certification states that an PHA supervisor or other qualified person performed quality control HQS reinspections during the PHA fiscal year for a sample of units under contract which meets the minimum sample size requirements specified in [§](#)

[983.2](#) under PHA's quality control sample. The PHA's SEMAP certification also states that the reinspected sample was drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding the quality control reinspection) and was drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. 5 points.

(ii) The PHA's SEMAP certification does not support the statements in [paragraph \(e\)\(3\)\(i\)](#) of this section. 0 points.

(f) ***HQS enforcement.***

(1) This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening HQS deficiencies are corrected within 24 hours from the inspection and all other cited HQS deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension. In addition, if HQS deficiencies are not corrected timely, the indicator shows whether the PHA stops (abates) housing assistance payments beginning no later than the first of the month following the specified correction period or terminates the HAP contract or, for family-caused defects, takes prompt and vigorous action to enforce the family obligations. ([24 CFR 982.404](#))

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating:

(i) The PHA's SEMAP certification states that the PHA's quality control sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, for at least 98 percent of cases sampled, all other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any PHA-approved extension, or, if any life-threatening HQS deficiencies were not corrected within 24 hours and all other HQS deficiencies were not corrected within 30 calendar days or any PHA-approved extension, the PHA stopped (abated) housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce family obligations. 10 points.

(ii) The PHA's SEMAP certification does not support the statement in [paragraph \(f\)\(3\)\(i\)](#) of this section. 0 points.

(g) ***Expanding housing opportunities.***

(1) This indicator applies only to PHAs with jurisdiction in metropolitan FMR areas. The indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs rental voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration. ([24 CFR 982.54\(d\)\(5\)](#), [982.301\(a\)](#) and [982.301\(b\)\(4\)](#) and [982.301\(b\)\(12\)](#))

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating:

(i) The PHA's SEMAP certification states that:

(A) The PHA has a written policy in its administrative plan which includes actions the PHA will take to encourage participation by owners of units located outside areas of poverty or minority concentration, and which clearly delineates areas in its jurisdiction that the PHA considers areas of poverty or minority concentration;

(B) PHA documentation shows that the PHA has taken actions indicated in its written policy to encourage participation by owners of units located outside areas of poverty or minority concentration;

(C) The PHA has prepared maps that show various areas with housing opportunities outside areas of poverty or minority concentration both within its jurisdiction and neighboring its jurisdiction; has assembled information about the characteristics of those areas which may include information about job opportunities, schools, transportation and other services in these areas; and can demonstrate that it uses the maps and area characteristics information when briefing rental voucher holders about the full range of areas where they may look for housing;

(D) The PHA's information packet for rental voucher holders contains either a list of owners who are willing to lease (or properties available for lease) under the rental voucher program; or a current list of other organizations that will help families find units and the PHA can demonstrate that the list(s) includes properties or organizations that operate outside areas of poverty or minority concentration;

(E) The PHA's information packet includes an explanation of how portability works and includes a list of portability contact persons for neighboring housing agencies, with the name, address and telephone number of each, for use by families who move under portability; and

(F) PHA documentation shows that the PHA has analyzed whether rental voucher holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, if such difficulties have been found, PHA documentation shows that the PHA has analyzed whether it is appropriate to seek approval of exception payment standard amounts in any part of its jurisdiction and has sought HUD approval of exception payment standard amounts when necessary. 5 points.

(ii) The PHA's SEMAP certification does not support the statement in [paragraph \(g\)\(3\)\(i\)](#) of this section. 0 points.

(h) ***Deconcentration bonus.***

(1) Submission of deconcentration data in the HUD-prescribed format for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50th percentile rent to provide access to a broad

range of housing opportunities throughout a metropolitan area in accordance with [§ 888.113\(c\) of this title](#), starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMR set at the 50th percentile rent. Submission of deconcentration data for this indicator is optional for all other PHAs. Additional SEMAP points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit with their SEMAP certifications certain data, in a HUD-prescribed format, on the percent of their tenant-based Section 8 families with children who live in, and who have moved during the PHA fiscal year to, low poverty census tracts in the PHA's principal operating area. For purposes of this indicator, the PHA's principal operating area is the geographic entity for which the Census tabulates data that most closely matches the PHA's geographic jurisdiction under State or local law (e.g., city, county, metropolitan statistical area) as determined by the PHA, subject to HUD review. A low poverty census tract is defined as a census tract where the poverty rate of the tract is at or below 10 percent, or at or below the overall poverty rate for the principal operating area of the PHA, whichever is greater. The PHA determines the overall poverty rate for its principal operating area using the most recent available decennial Census data. Family data used for the PHA's analysis must be the same information as reported to MTCS for the PHA's tenant-based Section 8 families with children. If HUD determines that the quantity of MTCS data is insufficient for adequate analysis, HUD will not award points under this bonus indicator. Bonus points will be awarded if:

- (i) Half or more of all Section 8 families with children assisted by the PHA in its principal operating area at the end of the last completed PHA fiscal year reside in low poverty census tracts;
- (ii) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area during the last completed PHA fiscal year is at least 2 percentage points higher than the percent of all Section 8 families with children who reside in low poverty census tracts at the end of the last completed PHA fiscal year; or
- (iii) The percent of Section 8 families with children who moved to low-poverty census tracts in the PHA's principal operating area over the last two completed PHA fiscal years is at least 2 percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the second to last completed PHA fiscal year.
- (iv) State and regional PHAs that provide Section 8 rental assistance in more than one metropolitan area within a State or region make these determinations separately for each metropolitan area or portion of a metropolitan area where the PHA has assisted at least 20 Section 8 families with children in the last completed PHA fiscal year.

(2) HUD verification methods: PHA data submitted for the deconcentration bonus, the IA annual audit report covering the PHA fiscal year entered on the SEMAP certification, and on-site confirmatory review if performed.

(3) Rating:

- (i) The data submitted by the PHA for the deconcentration bonus shows that the PHA met the requirements for bonus points in [paragraph \(h\)\(1\)\(i\)](#), [\(ii\)](#) or [\(iii\)](#) of this section. 5 points.

(ii) The data submitted by the PHA for the deconcentration bonus does not show that the PHA met the requirements for bonus points in [paragraph \(h\)\(1\)\(i\)](#), [\(ii\)](#) or [\(iii\)](#) of this section. 0 points.

(i) ***Payment standards.***

(1) This indicator shows whether the PHA has adopted a payment standard schedule that establishes voucher payment standard amounts by unit size for each FMR area in the PHA jurisdiction, and, if applicable, separate payment standard amounts by unit size for a PHA-designated part of an FMR area, which payment standards do not exceed 110 percent of the current applicable published FMRs and which are not less than 90 percent of the current applicable published FMRs (unless a higher or lower payment standard amount is approved by HUD). ([§ 982.503 of this chapter](#).) For purposes of this paragraph, payment standards that do not exceed 110 percent of the current applicable published FMRs include exception payment standards established by the PHA in accordance with 982.503(c)(iii).

(2) HUD verification method: PHA data submitted on the SEMAP certification form concerning payment standards.

(3) Rating:

(i) The PHA's voucher program payment standard schedule contains payment standards which do not exceed 110 percent of the current applicable published FMR and which are not less than 90 percent of the current applicable published FMR (unless a higher or lower payment standard amount is approved by HUD). 5 points.

(ii) The PHA's voucher program payment standard schedule contains payment standards which exceed 110 percent of the current applicable published FMRs or which are less than 90 percent of the current applicable published FMRs (unless a higher or lower payment standard amount is approved by HUD). 0 points.

(j) ***Annual reexaminations.***

(1) This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months. ([24 CFR 5.617](#)).

(2) HUD verification method: MTCS report - Shows percent of reexaminations that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the PHA's electronic reporting of the annual reexamination on Form HUD-50058 and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual reexaminations is permitted.

(3) Rating:

(i) Fewer than 5 percent of all PHA reexaminations are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all PHA reexaminations are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all PHA reexaminations are more than 2 months overdue. 0 points.

(k) ***Correct tenant rent calculations.***

(1) This indicator shows whether the PHA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program. ([24 CFR 982 subpart K](#)).

(2) HUD verification method: MTCS report - Shows percent of tenant rent and family's share of the rent to owner calculations that are incorrect based on data sent to HUD by the PHA on Forms HUD-50058. The MTCS data used for verification cover only voucher program and regular certificate program tenancies, and do not include rent calculation discrepancies for manufactured home owner rentals of manufactured home spaces under the certificate program or for proration of assistance under the noncitizen rule.

(3) Ratings:

(i) 2 percent or fewer of PHA tenant rent and family's share of the rent to owner calculations are incorrect. 5 points.

(ii) More than 2 percent of PHA tenant rent and family's share of the rent to owner calculations are incorrect. 0 points.

(l) ***Pre-contract housing quality standards (HQS) inspections.***

(1) This indicator shows whether newly leased units pass HQS inspection on or before the beginning date of the assisted lease and HAP contract. ([24 CFR 982.305](#)).

(2) HUD verification method: MTCS report - Shows percent of newly leased units where the beginning date of the assistance contract is before the date the unit passed HQS inspection.

(3) Rating:

(i) 98 to 100 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 5 points.

(ii) Fewer than 98 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 0 points.

(m) ***Annual HQS inspections.***

(1) This indicator shows whether the PHA inspects each unit under contract at least annually. ([24 CFR 982.405\(a\)](#))

(2) HUD verification method: MTCS report - Shows percent of HQS inspections that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the PHA's electronic reporting of the annual HQS inspection on Form HUD-50058, and to allow the processing of the data into MTCS. The 2-month allowance provided

here for rating purposes does not mean that any delay in completing annual HQS inspections is permitted.

(3) **Rating:**

(i) Fewer than 5 percent of annual HQS inspections of units under contract are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 0 points.

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

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

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

(3) ***Rating:***

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

(ii) The percent of units leased or occupied by homeowners under the voucher homeownership option, or the percent of allocated budget authority expended during the

calendar year that ends on or before the assessed PHA fiscal year was 95 to 97 percent. (15 points.)

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

(o) ***Family self-sufficiency (FSS) enrollment and escrow accounts.***

(1) This indicator applies only to PHAs with mandatory FSS programs. The indicator consists of 2 components which show whether the PHA has enrolled families in the FSS program as required, and the extent of the PHA's progress in supporting FSS by measuring the percent of current FSS participants with FSS progress reports entered in MTCS that have had increases in earned income which resulted in escrow account balances. ([24 CFR 984.105](#) and [984.305](#))

(2) HUD verification method: MTCS report - Shows number of families currently enrolled in FSS. This number is divided by the number of mandatory FSS slots, as determined under [§ 984.105 of this chapter](#). An MTCS report also shows the percent of FSS families with FSS progress reports who have escrow account balances. HUD also uses information reported on the SEMAP certification by initial PHAs concerning FSS families enrolled in their FSS programs but who have moved under portability to the jurisdiction of another PHA.

(3) Rating:

(i) The PHA has filled 80 percent or more of its mandatory FSS slots and 30 percent or more of FSS families have escrow account balances. 10 points.

(ii) The PHA has filled 60 to 79 percent of its mandatory FSS slots and 30 percent or more of FSS families have escrow account balances. 8 points.

(iii) The PHA has filled 80 percent or more of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 5 points.

(iv) 30 percent or more of FSS families have escrow account balances, but fewer than 60 percent of the PHA's mandatory FSS slots are filled. 5 points.

(v) The PHA has filled 60 to 79 percent of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 3 points.

(vi) The PHA has filled fewer than 60 percent of its mandatory FSS slots and less than 30 percent of FSS families have escrow account balances. 0 points.

(p) ***Success rate of voucher holders.***

(1) This indicator shows whether voucher holders were successful in leasing units with voucher assistance. This indicator applies only to PHAs that have received approval to establish success rate payment standard amounts in accordance with [§ 982.503\(e\)](#). This

indicator becomes initially effective for the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.

(2) HUD verification method: MTCS Report.

(3) ***Rating (5 points):***

(i) The proportion of families issued rental vouchers during the last PHA fiscal year that have become participants in the voucher program is more than the higher of:

(A) 75 percent; or

(B) The proportion of families issued rental vouchers that became participants in the program during the six month period utilized to determine eligibility for success rate payment standards under [§ 982.503\(e\)\(1\)](#) plus 5 percentage points; and

(ii) The percent of units leased during the last PHA fiscal year was 95 percent or more, or the percent of allocated budget authority expended during the last PHA fiscal year was 95 percent or more following the methodology of [§ 985.3\(n\)](#).

[[63 FR 48555](#), Sept. 10, 1998, as amended at [64 FR 40497](#), July 26, 1999; [64 FR 67983](#), Dec. 3, 1999; [65 FR 16733](#), Mar. 29, 2000; [65 FR 16823](#), Mar. 30, 2000; [65 FR 58875](#), Oct. 2, 2000; [66 FR 50005](#), Oct. 1, 2001; [77 FR 32018](#), May 31, 2012; [81 FR 80583](#), Nov. 16, 2016]

Subpart B - Program Operation

§ 985.101 SEMAP certification.

(a) An PHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

(1) The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

(2) An PHA that subcontracts administration of its program to one or more subcontractors shall require each subcontractor to submit the subcontractor's own SEMAP certification on the HUD-prescribed form to the PHA in support of the PHA's SEMAP certification to HUD. The PHA shall retain subcontractor certifications for 3 years.

(3) An PHA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the PHA in providing its certification.

(b) Failure of an PHA to submit its SEMAP certification within 60 calendar days after the end of its fiscal year will result in an overall performance rating of troubled and the PHA will be subject to the requirements at [§ 985.107](#).

(c) An PHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

[[63 FR 48555](#), Sept. 10, 1998, as amended at [66 FR 50006](#), Oct. 1, 2001]

§ 985.102 SEMAP profile.

Upon receipt of the PHA's SEMAP certification, HUD will rate the PHA's performance under each SEMAP indicator in accordance with [§ 985.3](#). HUD will then prepare a SEMAP profile for each PHA which shows the rating for each indicator, sums the indicator ratings, and divides by the total possible points to arrive at an PHA's overall SEMAP score. SEMAP scores shall be rounded off to the nearest whole percent.

§ 985.103 SEMAP score and overall performance rating.

(a) **High performer rating.** PHAs with SEMAP scores of at least 90 percent shall be rated high performers under SEMAP. PHAs that achieve an overall performance rating of high performer may receive national recognition by the Department and may be given competitive advantage under notices of fund availability.

(b) **Standard rating.** PHAs with SEMAP scores of 60 to 89 percent shall be rated standard.

(c) **Troubled rating.** PHAs with SEMAP scores of less than 60 percent shall be rated troubled.

(d) **Modified rating on an indicator.** A rating on any of the indicators at [§§ 985.3\(a\)](#) through [985.3\(h\)](#) will be subject to change after HUD receives the PHA's annual audit report or after HUD conducts a confirmatory review if the audit report or the confirmatory review report contains information that the PHA's SEMAP certification concerning an indicator is not accurate.

(e) **Modified or withheld overall rating.**

(1) Notwithstanding an PHA's SEMAP score, HUD may modify or withhold an PHA's overall performance rating when warranted by circumstances which have bearing on the SEMAP indicators such as an PHA's appeal of its overall rating, adverse litigation, a conciliation agreement under Title VI of the Civil Rights Act of 1964, fair housing and equal opportunity monitoring and compliance review findings, fraud or misconduct, audit findings or substantial noncompliance with program requirements.

(2) Notwithstanding an PHA's SEMAP score, if the latest IA report submitted for the PHA under the Single Audit Act indicates that the auditor is unable to provide an opinion as to whether the PHA's financial statements are presented fairly in all material respects in conformity with generally accepted accounting principals, or an opinion that the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole, the PHA will automatically be given an overall performance rating of troubled and the PHA will be subject to the requirements at [§ 985.107](#).

(3) When HUD modifies or withholds a rating for any reason, it shall explain in writing to the PHA the reasons for the modification or for withholding the rating.

[[63 FR 48555](#), Sept. 10, 1998, as amended at [64 FR 40498](#), July 26, 1999]