

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 985

[Docket No. FR-3986-F-02]

RIN 2577-AB60

**Section 8 Rental Voucher and
Certificate Programs and
Establishment Section 8 Management
Assessment Program (SEMAP)**

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

ACTION: Final rule.

SUMMARY: This rule establishes the Section 8 Management Assessment Program (SEMAP) to objectively measure public housing agency (HA) performance in key Section 8 tenant-based assistance program areas. SEMAP enables HUD to ensure program integrity and accountability by identifying HA management capabilities and deficiencies and by improving risk assessment to effectively target monitoring and program assistance. HAs can use the SEMAP performance analysis to assess their own program operations.

DATES: This rule is effective October 13, 1998, Sections 985.102 (SEMAP profile), 985.103 (SEMAP score and overall performance rating), 985.105(a), 985.105(b), 985.105(d) and 985.105(e) (HUD SEMAP responsibilities) and 985.107 (Required actions for HA with troubled performance rating) are stayed as of October 13, 1998, until further notice.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Acting Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-0477. Hearing or speech impaired individuals may call HUD's TTY number (202) 708-4594 or 1-800-877-8399 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. History and Scope of Rule

On December 2, 1996, at 61 FR 63930, HUD published a proposed rule to establish SEMAP for the tenant-based Section 8 rental voucher and rental certificate programs (24 CFR part 982), and for certain aspects of the project-based component of the certificate program and the Section 8 family self-

sufficiency (FSS) program. The proposed rule described 15 performance indicators that the Department planned to use to assess HA performance; the annual HA SEMAP certification and HUD review process; HUD scoring procedures and procedures for designating high, standard and troubled performers; and requirements for corrective action plans for improving performance.

HUD received 160 comments on the proposed rule which generally approve the broad purpose of the rule. Comments object to particular aspects of the proposed rule, and especially to inclusion of the proposed indicators for welfare to work and deconcentration. As a result of comments, the Department has revised the deconcentration indicator to measure HA efforts to expand housing opportunities rather than actual dispersal of Section 8 families. A deconcentration bonus indicator has also been added which awards up to 5 bonus points based on measurement of actual outcomes of HA actions as they impact on families choosing housing in low poverty areas. The Department has eliminated two (2) of the proposed indicators (time from request for lease approval to housing quality standards (HQS) inspection and welfare to work), and has added one indicator (utility allowance schedule). A new component has also been added to the FSS enrollment indicator to measure the percent of FSS participants with escrow account balances).

The SEMAP rule does not apply to Indian housing authority (IHA) administration of the tenant-based Section 8 programs. SEMAP does not cover the Section 8 moderate rehabilitation program (24 CFR 882, subparts D and E).

II. Program Operation

The basic SEMAP procedures have been modeled on the performance indicators for the assessment of public housing management required by section 6(j) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)). These public housing management indicators constituted the core of the former Public Housing Management Assessment Program (PHMAP), which has been replaced by the new Public Housing Assessment System (PHAS) implemented by a final rule published September 1, 1998. The PHAS is a much broader assessment system which places substantial weight on the physical condition of Public Housing. Although this SEMAP final rule does not include a physical assessment component, it is HUD's intention to develop a physical inspection system for Section 8 tenant-

based assistance once the Department and the industry have gained experience with the new PHAS system. Subpart C has been reserved in this rule for a future physical assessment component.

A. SEMAP Certification

Section 985.101 requires an HA administering a Section 8 tenant-based assistance program to submit annually a SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification form requires short answers from HAs concerning HA performance under the 14 SEMAP indicators and assures HUD that HA responses are accurate and that there is no evidence of seriously deficient performance. The HA board of commissioners approves, and the board chairperson and HA executive director sign, the certification. An HA must submit its first annual SEMAP certification form within 60 days after its first fiscal year end that follows the effective date of this final rule.

B. SEMAP Score and Overall Performance Rating

1. HUD Assessment and Verification of SEMAP Certification

Upon receipt of the annual HA SEMAP certification, HUD will independently assess each HA's performance under SEMAP using annual audit reports, family data reported by HAs on Forms HUD-50058 and HUD-50058-FSS and maintained in the HUD Multifamily Tenant Characteristics System (MTCS), and other available information to verify the HA responses. HUD may also conduct an on-site confirmatory review to verify an HA certification under any indicator. Based upon this HUD review and verification, HUD will prepare a SEMAP profile for each HA, assigning a rating for each SEMAP indicator in accordance with the regulation.

The final rule provides at § 985.3, that if the HUD verification method for a SEMAP indicator relies on data in MTCS, and HUD determines those data are insufficient to verify the HA's certification on the indicator due to the HA's failure to adequately report family data, HUD will assign a zero rating for the indicator. The Department expects that no less than 75 percent of an HA's rental voucher and certificate program participants must be reported for the MTCS data to be sufficient for assigning ratings under SEMAP. HUD, in its discretion, may increase the required level of MTCS reporting for SEMAP rating purposes at any time to a standard higher than 75 percent. HAs are reminded that the regulations in

force since 1995, at 24 CFR 982.158 and 908.104, require 100 percent reporting of participant data to MTCS in accordance with HUD instructions.

Comments question whether MTCS data are reliable for rating HAs under the SEMAP indicators and whether independent auditors (IAs) have sufficient capability to understand program rules to provide accurate assessments of compliance. Comments also express concern that auditors will vary in their audit procedures and that the cost of the audit will increase as a result of the auditor's added responsibilities under this rule.

The Department will not rate indicators under this rule until it is confident that MTCS data are reliable and auditor guidance has been issued to help auditors understand program requirements and consistently measure compliance. Therefore, until HUD determines that the independent verification methods for the SEMAP indicators stated in § 985.3 are properly implemented, the Department will accept the HA certification and will continue to depend on confirmatory reviews to the extent they are performed to measure performance and compliance.

Initially, the Department will not assign overall performance ratings. When independent verification methods for the indicators are properly implemented, the Department will publish a **Federal Register** notice of the effective date for the full implementation of SEMAP, including ratings under the indicators and issuance of overall performance ratings, which is expected early in calendar year 2000. Consequently, implementation of §§ 985.102 (SEMAP profile), 985.103 (SEMAP score and overall performance rating), 985.105(a), (b), (d) and (e) (HUD SEMAP responsibilities), and 985.107 (Required actions for HA with troubled performance rating) will be deferred until further notice.

Several comments expressed concern that the audit report to be used for independent verification of performance will not be available to HUD until as much as 13 months after the HA fiscal year for which performance is assessed. The Single Audit Act amendments of 1996, shortened to 9 months the amount of time between the end of an audit period and the submission of the audit report. Nonetheless, the Department recognizes that there is still a lag between the end of the HA fiscal year and the Department's receipt of the audit report. The Department plans to use the latest available audit report to rate those indicators for which the audit is the method of verification. The

performance indicators measured by the auditor are mostly fundamental program responsibilities which HAs have been performing for many years and for which there has been long-standing guidance. In general, there ought not be substantial variance in an HA's administration of these functions from year to year. However, to the extent that the HA has improved performance under an indicator after the audit, the HA may describe to HUD any corrective action taken since the audit (see § 985.101(a)(3)) and, if HUD deems it appropriate, HUD may adjust the HA's overall performance rating accordingly.

The Department recognizes that the cost of the audit may increase due to additional compliance testing which may be required as a result of this rule, and due to the requirement for explicit statements in the audit report concerning compliance related to the SEMAP indicators. The Department has determined to bear the added cost in return for the increased information about how well HAs administer the aspects of the program measured by the audit.

2. Small Housing Agencies

Several HAs commented that SEMAP is an undue administrative burden and should not apply to HAs that administer fewer than 250 units. SEMAP was designed to minimize any new recordkeeping burden. Under the final rule, an HA that is not already doing so will need to begin maintaining documentation of its 5 percent HQS quality control inspections. HAs with FSS programs will need to track the number of FSS families with escrow accounts. Initial HAs that deal with FSS families who have moved under portability but continue in the FSS program of the initial HA will also have a minimal extra record-keeping burden. For all other SEMAP indicators, the Department expects that all HAs already keep records that will demonstrate performance in conformity with longstanding program requirements. Consequently, the Department does not agree that there is any significant administrative burden associated with SEMAP that should preclude its implementation for small HAs.

The Single Audit Act requires non-Federal entities that expend \$300,000 or more a year in Federal awards to have an audit made for that year. HAs that expend less than \$300,000 a year in Federal awards are exempt from Federal audit requirements. Therefore, the final rule provides that HAs that expend less than \$300,000 a year in Federal awards and whose Section 8 programs are not audited by an IA, will not be rated

under the SEMAP indicators for which HUD uses the audit report as the method of verification of HA performance. For these small HAs, the SEMAP score and overall performance rating will be determined based only on the remaining 7 SEMAP indicators, including lease-up and those indicators for which HUD uses MTCS as the method of verification. Although the SEMAP performance rating will not be determined using the indicators for which the audit report is the verification method, HAs not subject to Federal audit requirements must still complete the SEMAP certification for these indicators and performance under the indicators is still subject to HUD confirmatory reviews to the extent they are performed.

3. Determination of SEMAP Score and Overall Performance Rating

Comments objected to the proposed rating of several indicators for which 100 percent compliance was required in order to achieve highest points under the indicator. Comments said rating should be less stringent to allow for human error or circumstances beyond the HA's control. In the final rule, the rating on several indicators has been relaxed to not require 100 percent compliance to achieve highest points. Notwithstanding that some room for error is allowed in the SEMAP ratings, HAs are reminded that they are responsible for full compliance with program requirements.

Several HA comments requested the opportunity to review a preliminary SEMAP score before HUD issues a final score. The Department does not find the extra administrative procedures involved in issuing preliminary SEMAP scores worthwhile, since assignment of scores under SEMAP will be highly systematized, and the scores will generally be easily determinable from the IA audit report and from MTCS reports which HAs may obtain from HUD.

HUD will sum its ratings for the individual indicators and divide by the potential maximum number of points to arrive at an overall HA SEMAP score. Points awarded under the deconcentration bonus indicator will be added to the sum of the ratings for the individual indicators, but will not be included in the potential maximum number of points. HAs with SEMAP scores of at least 90 percent will receive an overall performance rating of high performer; HAs with SEMAP scores of 60 to 89 percent will receive an overall performance rating of standard; and HAs with scores of less than 60 percent will receive an overall performance

rating of troubled. HUD may modify an HA's overall performance rating when warranted by circumstances that have bearing on the SEMAP indicators such as an HA's appeal of its overall rating, adverse litigation, fair housing and equal opportunity compliance concerns, fraud or misconduct, audit findings, or substantial noncompliance with program requirements. HUD will provide the HA a written explanation of any modified overall performance rating.

As indicated above, the Department will not rate indicators under this rule until it is confident that MTCS data are reliable and audit guidance has been issued to help auditors understand program requirements and consistently measure compliance.

4. HUD Notification to HA of SEMAP Ratings

SEMAP Profile. The final rule provides that within 120 days of the HA's fiscal year end, HUD will complete an HA SEMAP profile and will notify the HA in writing of its rating on each SEMAP indicator, the HA's overall SEMAP score and its overall performance rating (high performer, standard, or troubled). HUD will also provide an HA's SEMAP ratings to the chief executive officer of the unit of local government where the HA has jurisdiction, and SEMAP ratings will be made available as public information over the Internet. As noted above, however, HUD will not assign an overall performance rating until HUD publishes the effective date for full implementation of SEMAP. The HUD notification letter will identify and require correction of any program management deficiencies within 45 days.

Modifications, Exclusions, Appeals. Several comments urged that there be provision for modifications or exclusions of certain indicators as in the Public Housing Management Assessment Program (PHMAP), and that there be detailed appeal procedures.

HUD finds the performance indicators in SEMAP so essential to adequate performance for any Section 8 tenant-based program that provision for modification or exclusion of any indicator is not warranted. Since appeals of SEMAP scores and ratings may be made for a variety of reasons in a variety of circumstances, the Department finds little practicality for a prescribed appeal process. The rule provides that the HA may appeal its overall performance rating to HUD by providing justification of the reasons for its appeal and that HUD must provide a final written determination to an HA

on its appeal. An appeal made to a HUD hub or program center or to the HUD Troubled Agency Recovery Center and denied, may be further appealed to the Assistant Secretary.

C. Required Actions for SEMAP Deficiencies

Section 985.106 requires that the HA improve its Section 8 program management for any SEMAP indicator that is rated zero (a "SEMAP deficiency"), and must send HUD a written report of the corrective action taken on the SEMAP deficiency within 45 days of receipt of its SEMAP ratings from HUD. If an HA fails to correct SEMAP deficiencies as required, HUD will require that the HA prepare and submit a written corrective action plan for the deficiency within 30 days.

HUD must, under § 985.107, review on-site any HA that is assigned an overall performance rating of troubled. HUD will issue a written report of its on-site review findings and recommendations. Upon receipt of the HUD report, the HA must write a corrective action plan and submit it to HUD for approval. Both the HA and HUD must monitor implementation of a corrective action plan to ensure targets for improved performance are met.

Any HA assigned an overall performance rating of troubled may not use any part of the administrative fee reserve for other housing purposes (see 24 CFR 982.155(b)). In these cases, HUD may require use of the administrative fee reserve for specific administrative improvements in areas where administration is found deficient.

D. HAs Under the Jurisdiction of More Than One HUD Office

For any HA with jurisdiction under the jurisdiction of more than one HUD office (e.g., a state agency), the HUD office with the greatest amount of funding obligated under ACCs will assume all responsibility for administration of SEMAP for the HA.

E. Default Under ACC

An HA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD may constitute a default under the ACC as determined by HUD. The ACC provides for HUD notice of a determination of default to the HA and authorizes HUD to take possession of all or any HA property, rights, or interests in connection with a program if HUD determines that the HA has failed to comply with obligations under the ACC, including compliance with all HUD regulations and other requirements (including the final SEMAP regulation),

or with obligations under a housing assistance payments (HAP) contract.

III. SEMAP Indicators

A. Proposed Indicators for Deconcentration and Welfare to Work

Comments nearly unanimously objected to inclusion of the proposed SEMAP indicators for deconcentration and welfare to work. The deconcentration indicator would have measured the extent to which Section 8 families with children leased units in census tracts of relatively low poverty, among metropolitan census tracts containing housing priced at or below the fair market rent (FMR), both within the HA's jurisdiction and within the entire metropolitan area. Comments state that deconcentration of assisted families is largely outside HA control, since the tenant-based program design gives families the right to choose their own housing. Comments also indicate that a performance requirement and the added costs to administer a mobility program which would produce significant results constitute an unfunded mandate. Some comments stated that the indicator is too complicated and confusing, and that the 1990 data used to determine areas with FMR-priced housing and poverty rates may be out of date.

In light of the comments, the Department has decided to revise the deconcentration indicator. The revised indicator has been renamed "expanding housing opportunities" (§ 985.3(g)) and measures an HA's efforts to encourage participation by owners of units located outside areas of poverty or minority concentration and to inform rental voucher and certificate holders of the full range of areas where they may lease housing, both inside and outside the HA's jurisdiction. The revised indicator measures HA actions required by program regulations at 24 CFR 982.54(d)(5), 982.301(a) and 982.301(b)(5) and 982.301(b)(13), and so does not require an HA to take action that is not funded by the administrative fee. The expanding housing opportunities indicator applies only to HAs with jurisdiction in metropolitan FMR areas.

The revised "expanding housing opportunities" indicator does not measure where families ultimately choose to lease housing. However, the Department continues to believe that it is important to develop a reasonable measure of the extent to which the HA's actions to expand housing opportunities actually result in family choices to lease housing in low poverty areas. The Department plans to issue a new

proposed rule which will present and seek comment on a potential new SEMAP deconcentration indicator to measure outcomes that is less complicated than the deconcentration indicator in the December 2, 1996 proposed rule.

To acknowledge the effectiveness of HA actions in achieving deconcentration until a new SEMAP deconcentration outcome measure is developed, the Department has added a 5-point deconcentration bonus indicator to this final rule (§ 985.3(h)). The deconcentration bonus indicator will give HAs with jurisdiction in metropolitan FMR areas the option of providing data on the percent of Section 8 families with children who choose housing in low poverty census tracts in the HA's principal operating area. Bonus points may be awarded if half or more of all Section 8 families with children live in low poverty areas in the HA's principal operating area, or if the percent of Section 8 mover families with children who choose housing in low poverty areas exceeds by at least 2 percentage points the percent of all the HA's Section 8 families with children who live in low poverty areas. For example, if 20 percent of all assisted families with children are in low poverty tracts, and 22 percent of mover families with children locate in low poverty tracts, the HA would be awarded 5 bonus points. Because an HA might make progress that varies year by year, bonus points may also be awarded if the percent of families moving to low poverty tracts over a 2-year period is 2 percentage points greater than the percent of all assisted families with children.

State and regional HAs 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 HA assists at least 20 families with children during the HA fiscal year. The separate metropolitan area ratings will then be weighted by the number of assisted families with children in each area and averaged to determine bonus points to be awarded to the State or regional HA.

Low poverty census tracts are defined as those where the poverty rate in the tract is at or below 10 percent, or at or below the overall poverty rate for the principal operating area of the HA, whichever is greater. This definition of low poverty census tract is intended to be a relative measure that may differ for the inner city and suburban portions of a metropolitan area, and that is consistent with variations in the

availability of affordable housing offered at or below HUD FMRs.

The Department does not intend that the bonus indicator for deconcentration should cause any HA with jurisdiction in a metropolitan FMR area to directly or indirectly reduce a family's opportunity to select among available units, including those in high-poverty areas. Rather, HUD intends, by including the extent to which Section 8 families with children choose housing in low poverty areas as a measure of performance for bonus points, that HAs will be encouraged to provide more outreach to owners in all areas of their jurisdictions and more counseling and assistance to motivate and increase housing choice on the part of families.

The proposed welfare to work indicator would have measured the percent of Section 8 families whose primary source of income was welfare, who moved from welfare to work over the course of a year. Comments state that movement of families from welfare to work is not under the HA's control, but rather depends on state work incentives, family skills, the local economy, and the quality of job training and placement programs. Comments state that moving families from welfare to work is not an HA responsibility at all and is unrelated to federal housing laws and regulations. Several comments state that HAs should not be expected to coordinate social services without funds to pay the costs. The final rule eliminates the proposed welfare to work indicator, but retains the FSS indicator which has basis in federal housing law.

B. Remarks on Particular Indicators

1. Selection From the Waiting List

This indicator measures whether the HA has written policies in its administrative plan for selecting applicants from the waiting list and follows these policies when selecting applicants for admission. The final rule raises the maximum points for the waiting list indicator (§ 985.3(a)) to 15 points from 10 points as had been proposed, based on comments which stressed the importance of this indicator.

2. Reasonable Rent

The final rule requires, for maximum points under the reasonable rent indicator (§ 985.3(b)), that the HA document for at least 98 percent of units 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; and at the HAP contract anniversary if there is a 5

percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. This is changed from the proposed indicator which required that reasonable rent be documented at the time of initial leasing and "at least annually". The change corresponds to the current requirement in the Section 8 certificate and voucher programs conforming rule.

Comments asked HUD to clarify what is required as a method for the HA to determine reasonable rent. The Section 8 certificate and voucher programs conforming rule at § 982.503, requires that the HA determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination the HA must consider location, quality, size, type, and age of the contract unit, and any amenities, housing services, maintenance and utilities to be provided by the owner under the lease. The Department plans to issue guidance concerning the determination of reasonable rent that will be substantially similar to guidance previously issued in paragraph 6-5 of Handbook 7420.7, *Public Housing Agency Administrative Practices Handbook for the Section 8 Existing Housing Program*.

Some comments questioned why reasonable rent is included as a SEMAP indicator since, with fair market rents (FMRs) set at the 40th percentile rents for the area, it is not worth an HA's effort to determine that rent is reasonable.

FMRs are set for entire metropolitan areas and for entire nonmetropolitan counties. Within these broad FMR areas it is normal for rents to vary considerably within submarkets. Within any broad FMR area, there are likely to be neighborhoods where prevailing rents are significantly below the HUD-published FMRs as well as neighborhoods with prevailing rents significantly above the HUD-published FMRs. In addition, any particular unit may command a lesser rent than the FMR due to its location, quality, size, type, age and amenities. Consequently, to ensure that rents paid under the Section 8 programs are not excessive in the local submarket, it is of utmost importance for the HA to make a determination of reasonable rent based on comparable unassisted units in the submarket determined by unit location, age, quality, size, type and amenities.

3. Determination of Adjusted Income

The proposed rule included an indicator for income determination and utility allowances. Comments urged HUD not to combine the standard for

the utility allowance schedule with the income determination indicator. Accordingly, the final rule includes a separate utility allowance schedule indicator.

The proposed rule provided that, to score points on the income determination indicator, the HA must obtain third party verification of family income, assets, and composition or document why independent verification is not possible. Some comments pointed out that third party verification of family composition is not generally required.

The final rule clarifies at § 985.3(c)(3), that the HA must obtain third party verification of adjusted income. This includes verification of 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 consequently the amount of assistance (e.g., full-time student status, custody). In general, the family's self-declaration of the numbers of its members, their ages, and their relationship to the head does not require third party verification unless there is HA uncertainty concerning these factors. For further clarification of verification requirements, HAs may use the guidance in paragraph 4-5 of Handbook 7420.7.

4. Utility Allowance Schedule

The final rule establishes a separate utility allowance schedule indicator (§ 985.3(d)) worth 5 points. The indicator measures whether the HA maintains an up-to-date utility allowance schedule.

5. HQS Quality Control Inspections

Comments asked for clarification of which inspections were subject to the 5 percent quality control reinspection and over what period of time the quality control reinspections must be performed. The final rule clarifies at § 985.3(e) that to obtain the 5 points under this indicator, an HA supervisor or other qualified person must reinspect a sample of units during the HA fiscal year, numbering at least 5 percent of the number of units under contract during the last completed HA fiscal year. In addition, the indicator has been modified to also require the reinspected sample to be drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding reinspection) and to be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

A small HA with only 1 or 2 employees may arrange with a nearby

HA to have a qualified HQS inspector perform the required quality control inspections.

6. FMR Limit and Payment Standards

The Department had requested specific comment on whether the FMR limit and payment standards indicator (§ 985.3(i)) should be retained as a SEMAP indicator in the final rule. Comments approved of the inclusion of this indicator in the final rule.

FMR Limit. Many comments expressed confusion over the FMR standard which allows only 10 percent of newly leased certificate units to exceed the FMR/exception rent limit. HAs did not understand how the indicator accommodated their authority to exceed the FMR by up to 10 percent for 20 percent of certificate units, as well as HUD's authority to approve area exception rents and case-by-case exception rents up to 120 percent of FMR.

Under the conforming rule, the HA's broad authority to exceed the FMR by up to 10 percent for 20 percent of certificate units, as well as HUD's authority to approve case-by-case exception rents up to 120 percent of FMR have been eliminated. However, the conforming rule retains provisions for HUD-approved area exception rents and provides for HA approval of exception rents if needed as reasonable accommodation for persons with disabilities.

The FMR indicator in the proposed rule was written to accommodate the new over-FMR tenancy option in the rental certificate program. Under the conforming rule, an HA may approve an initial gross rent that exceeds the FMR or HUD-approved exception rent (an over-FMR tenancy) for up to 10 percent of its incremental certificates under budget. The SEMAP proposed rule standard to have at least 90 percent of newly leased certificate units with initial rents at or below the FMR was meant to allow for up to 10 percent of all units to be leased under over-FMR tenancies. In this final rule the indicator has been modified for accuracy. The final rule standard excepts over-FMR tenancies from the measure entirely, and requires that at least 98 percent of units newly leased under the certificate program, other than over-FMR tenancies, have initial gross rents at or below the applicable FMR or approved exception rent limit.

Payment Standards. In addition to measuring whether the HA's voucher payment standards do not exceed the applicable FMR or HUD-approved exception rent limits, the final rule modifies the payment standard aspect of

the proposed indicator to also measure whether the HA's payment standards are not less than 80 percent of the applicable FMR or HUD-approved exception rent limits.

7. Annual Reexaminations

The Department had requested specific comment on whether the annual reexaminations indicator should be retained as a SEMAP indicator in the final rule. Comments approved of the inclusion of this indicator.

Many comments recommended that the SEMAP indicator require the annual reexamination to be completed "annually before the HAP contract anniversary" rather than "at least every 12 months". Comments indicated that many HAs view the annual reexamination as an annual process that involves not only reexamination of the family's adjusted income, but also the annual HQS inspection and the owner's annual rent adjustment in the certificate program. Many HAs expressed concern about delays in rent negotiations or in HQS inspections impacting the timeliness of the HA's annual reexamination.

The program requirement is that the results of the annual reexamination of the family's adjusted income take effect at least every 12 months. The annual reexamination of adjusted income does not entail the annual HQS inspection or the owner's rent adjustment, although HAs may, nevertheless, find it convenient to coordinate these annual processes.

Some comments indicated that, when an HA knows a family move is imminent, the HA will intentionally delay the annual reexamination so that its effective date will coincide with the HQS inspection and the HAP contract anniversary for the family's new unit. The law and regulations do not permit a delay in the annual reexamination for this reason. However, HUD recognizes that it is administratively convenient for HAs to coordinate the timing of the annual reexamination, HQS inspection and owner's rent adjustment processes. When a family moves to a new unit and thereby establishes a new HQS inspection date and HAP contract anniversary date, if the family's latest annual reexamination took effect within 4 months prior to the new HAP contract anniversary, the HA may simply ascertain whether there has been any change in the family's adjusted income since the last annual reexamination and, if so, obtain third party verification of only the change. The HA must then use any new verified information together with information from the last annual reexamination to redetermine the family

share of rent and the housing assistance payment. The HA may consider and report that income redetermination, upon a move within 4 months of the effective date of the last annual reexamination, as a new annual reexamination. This will establish a new annual reexamination date that coincides with the date of the HQS inspection and HAP contract anniversary at the new unit.

The ratings for the annual reexaminations indicator at § 985.3(j) indicate that annual reexaminations may not be more than 2 months overdue. This 2-month allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual reexamination on Form HUD-50058, and to allow the processing of the data into the MTCS. The Form HUD-50058 data are used to measure performance under this indicator. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual reexaminations is ever permitted.

8. Correct Tenant Rent Calculations

This indicator shows whether the HA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program. The final rule (§ 985.3(k)) clarifies that the MTCS report used to verify performance under this indicator will cover only rent calculation discrepancies for regular certificate and voucher program tenancies, and will not include rent calculation discrepancies for over-FMR tenancies in the rental certificate program, for manufactured home owner rentals of manufactured home spaces, or for proration of assistance under the noncitizen rule.

9. Annual HQS Inspections

The ratings for the annual HQS inspections indicator (§ 985.3(m)) indicate that annual HQS inspections may not be more than 2 months overdue. This 2-month allowance is provided only to accommodate a possible lag in the HA's electronic reporting of the annual HQS inspections on Form HUD-50058, and to allow the processing of the data into the MTCS. The Form HUD-50058 data are used to measure performance under this indicator. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual HQS inspections is ever permitted.

10. Lease-up

The proposed rule required that 98 percent or more of units budgeted for the last completed HA fiscal year be contracted to receive maximum points under the lease-up indicator. Comments state that it is unreasonable to expect 98 percent lease-up with the required 3-month delay in reissuance of turnover and that this indicator should be excluded from SEMAP until the 3-month delay on reissuance is revoked.

The final rule at § 985.3(n) does not address the 3-month delay on reissuance of turnover. However, in the event future legislation impacts the lease-up indicator, or any other SEMAP indicator, the Department will publish a **Federal Register** notice to temporarily modify SEMAP standards as may be required by future legislative provisions.

Many comments recommended that the lease-up indicator account for circumstances which affect leasing such as rental market factors, economic conditions, and HA termination of assistance for violations of family obligations. Other comments recommended that allocations for special use, such as in connection with public housing demolition or for litigation, should be excluded from measurement of performance under this indicator.

The lease-up indicator under the final rule measures units leased during the last HA fiscal year as a percent of units budgeted for the last HA fiscal year. The number of units budgeted on Form HUD-52672, Supporting Data for Annual Contributions Estimates, is the number of units estimated to be leased during the fiscal year and should account for local market conditions, the HA's experience concerning terminations for violation of family obligations, as well as for anticipated leasing of units under special allocations. Therefore, the indicator has not been modified to further consider these factors.

The proposed HUD verification method for lease-up has been modified to measure the number of units leased during the last HA fiscal year by using the number of unit months under contract as reported on the HUD-approved Form HUD-52681, Voucher for Payment of Annual Contributions and Operating Statement, divided by 12 months, and then dividing by the number of units budgeted for the last HA fiscal year as shown on the HUD-approved Form HUD-52672. Comments indicate this method which measures lease-up over the course of the fiscal year is preferred over use of the Program

Utilization Report which measures lease-up at a point in time.

11. FSS Enrollment and Escrow Accounts

The final rule lowers the maximum points for FSS enrollment (§ 985.3(o)) to 5 points from 10 points as had been proposed; however, another 5-point FSS component has been added to the FSS indicator. Comments indicate that the SEMAP indicator for FSS should be fashioned to measure FSS results, not just to count families enrolled in FSS. The final rule includes a new 5-point FSS component which measures the percent of current FSS participants with FSS progress reports entered in MTCS who have had increases in earned income since enrollment and consequently, have built escrow account balances.

The HUD method of verification for the FSS indicator is an MTCS report which shows the number of the HA's Section 8 families that are currently enrolled in the HA's FSS program and the percent of the HA's current FSS participants that have established escrow account balances. Occasionally, an FSS participant may move under portability to another HA's jurisdiction, but remains in the FSS program of the initial HA. When the family's FSS participation is properly reported by the receiving HA, MTCS will incorrectly report this family as enrolled and with an escrow account in the receiving HA's FSS program rather than in the initial HA's FSS program. Therefore, until the Form HUD-50058-FSS and MTCS are modified to show the FSS enrollment and escrow account in the initial HA's program, if the initial HA wishes to be given credit for the family's FSS enrollment and escrow account, it will be necessary for the initial HA to manually report on its SEMAP certification the number of its current FSS families enrolled and the number of its current FSS families with escrow accounts who have exercised portability and whose Section 8 assistance is administered and reported by the receiving HA.

The FSS indicator at § 985.3(o) applies only to HAs with mandatory FSS programs (i.e., HAs that received FY 1992 FSS incentive award Section 8 funding or that received FY 1993 and later year Section 8 funding, excluding Section 8 funding in conjunction with Section 8 and Section 23 contract terminations; public housing demolition, disposition and replacement; HUD multifamily property sales; prepaid or terminated mortgages under section 236 or section 221(d)(3); and Section 8 renewal funding).

C. Comments on Possible Additional Indicators

The Department specifically invited comment on whether SEMAP should include performance indicators on rent burden and portability. Comments do not support and the final rule does not include performance indicators for these areas. However, note that the new expanding housing opportunities indicator (§ 985.3(g)) covers certain aspects of portability.

The Department also invited comment on whether SEMAP should include a performance indicator on timeliness of housing assistance payments to owners. There was relatively light commenting on this potential indicator in response to the proposed rule; approximately 20 of 160 comments addressed whether to add an indicator for timeliness of housing assistance payments—4 comments were supportive and 10 were opposed. Given the light response, the Department plans to issue a new proposed rule which will provide further detail concerning a possible indicator for timeliness of housing assistance payments and will seek further comment on whether to add this as a SEMAP indicator. Timeliness of housing assistance payments is not included as a SEMAP indicator in this final rule.

The Department also plans to include in the forthcoming proposed rule another SEMAP indicator for HA implementation of certain HA screening and termination policies. On March 31, 1997, the Department issued a proposed rule for implementation of provisions under the Housing Opportunity Program Extension Act of 1996. The March 31, 1997 proposed rule would require that an HA deny eligibility for families who were evicted from housing assisted under the 1937 Act for drug-related criminal activity or for serious violation of the lease; terminate assistance for a family that was evicted from housing assisted under the program for serious violation of the lease; and establish standards for denying and terminating assistance if a family member is illegally using a controlled substance or has a pattern of abuse of alcohol that interferes with peaceful enjoyment of the premises by other residents. The new proposed SEMAP indicator would measure HA performance in implementing the requirements of the forthcoming final rule concerning these admissions and occupancy policies. The new SEMAP proposed rule will also revise the HQS quality control inspection sample size to require statistically significant sample sizes

based on the size of the HA's tenant-based program.

The Department noted in the preamble to the proposed rule that it plans to add a SEMAP indicator in the next 2 years to measure an HA's performance in analyzing computer matching results under the Tenant Eligibility Verification System (TEVS) and in taking appropriate administrative actions (e.g., resolving reported income discrepancies and tracking amount of money recovered). Comments indicate it is premature to include an indicator on HA action in support of computer matching since TEVS needs further development to ensure accuracy and completeness. The Department acknowledges that it is too early to include a SEMAP indicator related to TEVS, but plans to add a TEVS indicator in the future when the system is fully functional.

Finally, the Department is considering adding two additional SEMAP indicators in the future: one to measure HA performance in enforcing HQS based on results of inspections performed by an auditing entity for a sample of units, and the second to measure customer satisfaction. Both of these measures of HA performance will be used for Public Housing under a revised public housing assessment system administered by the Department's Real Estate Assessment Center. After a period of testing the new public housing assessment system measures in these areas, the Department anticipates publishing a proposed rule to seek comment on similar indicators for SEMAP.

IV. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in §§ 985.101, 985.107(c), and 985.106 in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0215. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection

between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Planning and Review

This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. The rule establishes management assessment criteria for HAs. HUD does not anticipate a significant economic impact on a substantial number of small entities, since the rule establishes management assessment criteria which will be utilized by State/Area Offices for monitoring purposes and the provision of technical assistance to HAs.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule is intended to promote good management practices by including, in HUD's relationship with HAs, continuing review of HAs' compliance with already existing requirements. The rule does not create any new significant requirements of its own. As a result, the

rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers are 14.855 and 14.857.

List of Subjects in 24 CFR Part 985

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

Accordingly, 24 CFR, chapter IX is amended as follows:

1. A new part 985 is added to read as follows:

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

Subpart A—General

Sec.

985.1 Purpose and applicability.

985.2 Definitions.

985.3 Indicators, HUD verification methods and ratings.

Subpart B—Program Operation

985.101 SEMAP certification.

985.102 SEMAP profile.

985.103 SEMAP score and overall performance rating.

985.104 HA right of appeal of overall rating.

985.105 HUD SEMAP responsibilities.

985.106 Required actions for SEMAP deficiencies.

985.107 Required actions for HA with troubled performance rating.

985.108 SEMAP records.

985.109 Default under the Annual Contributions Contract (ACC).

Subpart C—Physical Assessment Component [Reserved]

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

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 an objective system for HUD to measure HA performance in key Section 8 program areas to enable the Department to ensure program integrity and accountability. SEMAP provides procedures for HUD to identify HA management capabilities and deficiencies in order to target monitoring and program assistance more effectively. HAs can use the SEMAP performance analysis to assess and improve their own program operations.

(b) *Applicability.* This rule applies to HA 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).

§ 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:

Corrective action plan means a HUD-required written plan that addresses HA program management deficiencies or findings identified by HUD through remote monitoring or on-site review, and that will bring the HA to an acceptable level of performance.

HA means a Housing Agency.

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.

Performance indicator means a standard set for a key area of Section 8 program management against which the HA's performance is measured to show whether the HA administers the program properly and effectively. (See § 985.3.)

SEMAP certification means the HA'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 HA's ratings on each SEMAP indicator, its overall SEMAP score, and its overall performance rating (high performer, standard, troubled).

§ 985.3 Indicators, HUD verification methods and ratings.

This section states the performance indicators that are used to assess HA Section 8 management. HUD will use the verification method identified for each indicator in reviewing the accuracy of an HA's annual SEMAP certification. HUD will prepare a SEMAP profile for

each HA 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 HA's certification on the indicator due to the HA's failure to adequately report family data, HUD will assign a zero rating for the indicator. Similarly, if the HUD verification method for the indicator relies on the HA's annual audit report and HUD does not receive the audit report within the nine month reporting period, HUD may assign a zero rating for the indicator.

An HA 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 the HUD verification method. For those HAs, 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, HAs 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 HA has written policies in its administrative plan for selecting applicants from the waiting list and whether the HA 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 latest independent auditor (IA) annual audit report.

(3) Rating: (i) The latest IA audit report states that:

(A) The HA has written waiting list selection policies in its administrative plan and,

(B) Based on randomly selected samples of applicants and admissions, documentation shows that at least 98 percent of the families in the 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 latest IA audit report does not support the statement in paragraph (a)(3)(i) of this section. 0 points.

(b) *Reasonable Rent.* (1) This indicator shows whether the HA 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; and at the HAP contract anniversary if there is a 5 percent decrease in the published fair market rent (FMR) in effect 60 days before the HAP contract anniversary. The HA'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 982.503)

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that:

(A) The HA 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 a randomly selected sample of tenant files, the HA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with § 982.503 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 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

(ii) The latest IA audit report includes the statements in paragraph (b)(3)(i) of this section, except that the HA 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 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 15 points.

(iii) The latest IA audit report 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 HA verifies and correctly determines adjusted annual income for each assisted family and, where the family is responsible for utilities under the lease, the HA 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 latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that, based on a randomly selected sample of tenant files, for at least 90 percent of families:

(A) The HA 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 HA properly attributes and calculates allowances for any medical, child care, and/or disability assistance expenses; and

(C) The HA uses the appropriate utility allowances to determine gross rent for the unit leased. 20 points.

(ii) The latest IA audit report includes the statements in paragraph (c)(3)(i) of this section, except that the HA 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 latest IA audit report 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 HA maintains an up-to-date utility allowance schedule. (24 CFR 982.517)

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that the auditor has determined that the HA 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 latest IA audit report 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 HA supervisor or other qualified person reinspects a sample of units under contract during the HA fiscal year, numbering at least 5 percent of the number of units under contract during the last completed HA fiscal year (as determined by taking unit months under HAP contract as shown on the HA's latest approved year end operating statement divided by 12), for quality

control of HQS inspections. The HA 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 latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that the auditor has determined that an HA supervisor or other qualified person performed quality control HQS reinspections during the HA fiscal year for a sample of units under contract numbering at least 5 percent of the number of units under contract during the last HA fiscal year. The audit report 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 latest IA audit report 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 HA-approved extension. In addition, if HQS deficiencies are not corrected timely, the indicator shows whether the HA 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 latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that the review of a randomly selected 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 HA-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 HA-approved extension, the HA 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 latest IA audit report 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 HAs with jurisdiction in metropolitan FMR areas. The indicator shows whether the HA 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 and certificate holders of the full range of areas where they may lease units both inside and outside the HA'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)(5) and 982.301(b)(13))

(2) HUD verification method: The latest IA annual audit report.

(3) Rating: (i) The latest IA audit report states that:

(A) The HA has a written policy in its administrative plan which includes actions the HA 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 HA considers areas of poverty or minority concentration;

(B) HA documentation shows that the HA 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 HA 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 and certificate holders about the full range of areas where they may look for housing;

(D) The HA's information packet for rental voucher and certificate holders contains either a list of owners who are

willing to lease (or properties available for lease) under the rental voucher or certificate programs; or a current list of other organizations that will help families find units and the HA can demonstrate that the list(s) includes properties or organizations that operate outside areas of poverty or minority concentration;

(E) The HA'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) HA documentation shows that the HA has analyzed whether rental voucher and certificate holders have experienced difficulties in finding housing outside areas of poverty or minority concentration and, if such difficulties have been found, HA documentation shows that the HA has analyzed whether it is appropriate to seek approval of area exception rents in any part of its jurisdiction and has sought HUD approval of exception rents when necessary. 5 points.

(ii) The latest audit report does not support the statement in paragraph (g)(3)(i) of this section. 0 points.

(h) *Deconcentration bonus.* (1)

Additional SEMAP points are available to HAs 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 HA fiscal year to, low poverty census tracts in the HA's principal operating area. For purposes of this indicator, the HA's principal operating area is the geographic entity for which the Census tabulates data that most closely matches the HA's geographic jurisdiction under State or local law (e.g., city, county, metropolitan statistical area) as determined by the HA, 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 HA, whichever is greater. The HA determines the overall poverty rate for its principal operating area using the most recent available decennial Census data. Family data used for the HA's analysis must be the same information as reported to MTCS for the HA'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 HA in its principal operating area at the end of the last completed HA 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 HA's principal operating area during the last completed HA 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 HA fiscal year; or

(iii) The percent of Section 8 families with children who moved to low-poverty census tracts in the HA's principal operating area over the last two completed HA 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 HA fiscal year.

(iv) State and regional HAs 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 HA has assisted at least 20 Section 8 families with children in the last completed HA fiscal year.

(2) HUD verification method: HA data submitted for the deconcentration bonus and latest IA annual audit report.

(3) Rating: (i) The data submitted by the HA for the deconcentration bonus shows that the HA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section, and the latest IA audit report states that the auditor has determined that the HA has on file documentation of its analysis of data which supports its submission to HUD for bonus points under this indicator. 5 points.

(ii) The data submitted by the HA for the deconcentration bonus does not show that the HA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section, or the latest IA audit report does not state that the auditor has determined that the HA has on file documentation of its analysis of data which supports its submission to HUD for bonus points under this indicator. 0 points.

(iii) HUD will rate metropolitan areas within State or regional HA jurisdictions separately and the separate metropolitan area ratings will then be weighted by the number of assisted families with children in each area and

averaged to determine bonus points to be awarded to the State or regional HA.

(i) *Fair market rent (FMR) limit and payment standards.* (1) This indicator shows whether: at least 98 percent of the units newly leased under the rental certificate program, other than over-FMR tenancies, have initial gross rents at or below the applicable FMR or approved exception rent limit; and whether the HA has adopted current payment standards for the rental voucher program by unit size for each FMR area in the HA jurisdiction, and, if applicable, for each HUD-approved exception rent area within an FMR area, which payment standards do not exceed the current applicable FMR or HUD-approved exception rent limits and which are not less than 80 percent of the current FMR/exception rent limit (unless a lower percent is approved by HUD). If the HA administers either the rental certificate program or the rental voucher program but not both, only the standard for the program which the HA administers applies. (24 CFR 982.508(a) and 982.505(b)(3)).

(2) HUD verification method: HA data submitted on the SEMAP certification form concerning payment standards and MTCS report—Shows newly leased certificate units' gross rents (excluding over-FMR tenancies) compared to the FMR or approved exception rent.

(3) Rating: (i) Excluding over-FMR tenancies, at least 98 percent of the units newly leased under the rental certificate program have initial gross rents at or below the applicable FMR or approved exception rent limits, and the HA's current rental voucher program payment standards do not exceed the current applicable FMR or HUD-approved exception rent limits and are not less than 80 percent of the current FMR/exception rent limit (unless a lower percent is approved by HUD). 5 points.

(ii) Excluding over-FMR tenancies, more than 2 percent of rental certificate program units have been newly leased at initial gross rents that exceed the applicable FMR/exception rent limits, or the HA's rental voucher program payment standards exceed the FMR/exception rent limits or are less than 80 percent of the current FMR/exception rent limit (unless a lower percent is approved by HUD). 0 points.

(j) *Annual reexaminations.* (1) This indicator shows whether the HA 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 HA'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 HA reexaminations are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all HA reexaminations are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all HA reexaminations are more than 2 months overdue. 0 points.

(k) *Correct tenant rent calculations.*

(1) This indicator shows whether the HA 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 HA on Forms HUD-50058. The MTCS data used for verification cover only regular certificate and voucher program tenancies and do not include rent calculation discrepancies for over-FMR tenancies in the rental certificate program, for manufactured home owner rentals of manufactured home spaces, or for proration of assistance under the noncitizen rule.

(3) Ratings: (i) 2 percent or fewer of HA tenant rent and family's share of the rent to owner calculations are incorrect. 5 points.

(ii) More than 2 percent of HA 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 99 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 HA 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 HA'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.* (1) This indicator shows whether the HA enters HAP contracts for the number of units under budget for at least one year.

(2) HUD verification method: Percent of units leased during the last completed HA fiscal year as determined by taking unit months under HAP contract as shown on HA's latest approved year-end operating statement divided by 12, and dividing by the number of units budgeted as shown on the HA's approved budget for the same HA fiscal year.

(3) Rating: (i) The percent of units leased during the last HA fiscal year was 98 percent or more. 20 points.

(ii) The percent of units leased during the last HA fiscal year was 95 to 97 percent. 15 points.

(iii) The percent of units leased during the last HA fiscal year was less than 95 percent. 0 points.

(o) *Family self-sufficiency (FSS) enrollment and escrow accounts.* (1) This indicator applies only to HAs with mandatory FSS programs. The indicator consists of 2 components which show whether the HA has enrolled families in the FSS program as required, and the extent of the HA'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 based on funding reserved for the HA through the second to last completed Federal fiscal year or based on a reduced number of mandatory slots under a HUD-approved exception. 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 HAs concerning FSS families enrolled in their FSS programs but who have moved under portability to the jurisdiction of another HA.

(3) Rating: (i) The HA 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 HA 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 HA 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 HA's mandatory FSS slots are filled. 5 points.

(v) The HA has filled 60 to 70 percent of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 3 points.

(vi) The HA 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.

Subpart B—Program Operation

§ 985.101 SEMAP certification.

(a) An HA 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 HA board resolution and be signed by the board of commissioners chairperson and by the HA executive director. If the HA 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 and by the chief executive officer of the unit of government or his or her designee.

(2) An HA 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 HA in support of the HA's SEMAP certification to HUD. The HA

shall retain subcontractor certifications for 3 years.

(3) An HA may include with its SEMAP certification any information bearing on the accuracy or completeness of the information used by the HA in providing its certification.

(b) Failure of an HA 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 HA will be subject to the requirements at § 985.107.

(c) An HA'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)

§ 985.102 SEMAP profile.

Upon receipt of the HA's SEMAP certification, HUD will rate the HA's performance under each SEMAP indicator in accordance with § 985.3. HUD will then prepare a SEMAP profile for each HA which shows the rating for each indicator, sums the indicator ratings, and divides by the total possible points to arrive at an HA'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.* HAs with SEMAP scores of at least 90 percent shall be rated high performers under SEMAP. HAs 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.* HAs with SEMAP scores of 60 to 89 percent shall be rated standard.

(c) *Troubled rating.* HAs with SEMAP scores of less than 60 percent shall be rated troubled.

(d) *Modified or withheld rating.* (1) Notwithstanding an HA's SEMAP score, HUD may modify or withhold an HA's overall performance rating when warranted by circumstances which have bearing on the SEMAP indicators such as an HA'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 HA's SEMAP score, if the latest IA report submitted

for the HA under the Single Audit Act indicates that the auditor is unable to provide an opinion as to whether the HA'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 HA will automatically be given an overall performance rating of troubled and the HA will be subject to the requirements at § 985.107.

(3) When HUD modifies or withholds an overall performance rating for any reason it shall explain in writing to the HA the reasons for the modification or for withholding the rating.

§ 985.104 HA right of appeal of overall rating.

An HA may appeal its overall performance rating to HUD by providing justification of the reasons for its appeal. An appeal made to a HUD hub or program center or to the HUD Troubled Agency Recovery Center and denied may be further appealed to the Assistant Secretary.

§ 985.105 HUD SEMAP responsibilities.

(a) *Annual review.* HUD shall assess each HA's performance under SEMAP annually and shall assign each HA a SEMAP score and overall performance rating.

(b) *Notification to HA.* No later than 120 calendar days after the HA's fiscal year end, HUD shall notify each HA in writing of its rating on each SEMAP indicator, of its overall SEMAP score and of its overall performance rating (high performer, standard, troubled). The HUD notification letter shall identify and require correction of any SEMAP deficiencies (indicator rating of zero) within 45 calendar days from date of HUD notice.

(c) *On-site confirmatory review.* HUD may conduct an on-site confirmatory review to verify the HA certification and the HUD rating under any indicator.

(d) *Changing rating from troubled.* HUD must conduct an on-site confirmatory review of an HA's performance before changing any annual overall performance rating from troubled to standard or high performer.

(e) *Appeals.* HUD must review, consider and provide a final written determination to an HA on its appeal of its overall performance rating.

(f) *Corrective action plans.* HUD must review the adequacy and monitor implementation of HA corrective action plans submitted under § 985.106(c) or § 985.107(c) and provide technical

assistance to help the HA improve program management. If an HA is assigned an overall performance rating of troubled, the HA's corrective action plan must be approved in writing by HUD.

§ 985.106 Required actions for SEMAP deficiencies.

(a) When the HA receives the HUD notification of its SEMAP rating, an HA must correct any SEMAP deficiency (indicator rating of zero) within 45 calendar days from date of HUD notice.

(b) The HA must send a written report to HUD describing its correction of any identified SEMAP deficiency.

(c) If an HA fails to correct a SEMAP deficiency within 45 calendar days as required, HUD may then require the HA to prepare and submit a corrective action plan for the deficiency within 30 calendar days from the date of HUD notice.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

§ 985.107 Required actions for HA with troubled performance rating.

(a) *Required on-site review.* Upon assigning an overall performance rating of troubled, HUD must conduct an on-site review of HA program management to assess the magnitude and seriousness of the HA's noncompliance with performance requirements.

(b) *HUD written report.* HUD must provide the HA a written report of its on-site review containing HUD findings of program management deficiencies, the apparent reasons for the deficiencies, and recommendations for improvement.

(c) *HA corrective action plan.* Upon receipt of the HUD written report on its on-site review, the HA must write a corrective action plan and submit it to HUD for approval. The corrective action plan must:

- (1) Specify goals to be achieved;
- (2) Identify obstacles to goal achievement and ways to eliminate or avoid them;
- (3) Identify resources that will be used or sought to achieve goals;
- (4) Identify an HA staff person with lead responsibility for completing each goal;
- (5) Identify key tasks to reach each goal;
- (6) Specify time frames for achievement of each goal, including intermediate time frames to complete each key task; and
- (7) Provide for regular evaluation of progress toward improvement.

(8) Be signed by the HA board of commissioners chairperson and by the HA executive director. If the HA is a unit of local government or a state, the corrective action plan must be signed by the Section 8 program director and by the chief executive officer of the unit of government or his or her designee.

(d) *Monitoring.* The HA and HUD must monitor the HA's implementation of its corrective action plan to ensure performance targets are met.

(e) *Use of administrative fee reserve prohibited.* Any HA assigned an overall performance rating of troubled may not use any part of the administrative fee reserve for other housing purposes (see 24 CFR 982.155(b)).

(f) *Upgrading poor performance rating.* HUD shall change an HA's overall performance rating from

troubled to standard or high performer if HUD determines that a change in the rating is warranted because of improved HA performance and an improved SEMAP score.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

§ 985.108 SEMAP records.

HUD shall maintain SEMAP files, including certifications, notifications, appeals, corrective action plans, and related correspondence for at least 3 years.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

§ 985.109 Default under the Annual Contributions Contract (ACC).

HUD may determine that an HA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC.

Subpart C—Physical Assessment Component [Reserved]

2. Sections 985.102, 985.103, 985.105(a), (b), (d) and (e), and 985.107 are stayed until further notice.

Dated: August 28, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98-23820 Filed 9-9-98; 8:45 am]

BILLING CODE 4210-33-P