DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 888 and 982

[Docket No. FR–4428–F–04]

RIN 2577–AB91

Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts as final certain provisions of the interim rule published on May 14, 1999, to implement the statutory merger of the Section 8 tenant-based certificate and voucher programs into the new Housing Choice Voucher Program, and makes amendments to other provisions of this interim rule. This final rule takes into consideration the public comments received on the interim rule, and most of the amendments made at this final rule stage are in response to public comment.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 14, 1999 (64 FR 26632), HUD published for public comment an interim rule amending the regulations for the Section 8 tenant-based program. The interim rule implemented most of the Section 8 tenant-based program provisions contained in the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Public Law 105–276, approved October 21, 1998; 112 Stat. 2461) (the ''1998 Act''). Of particular significance, the May 14, 1999 interim rule implemented section 545 of the 1998 Act. Section 545 provides for the complete merger of the Section 8 tenant-based certificate and voucher programs.

HUD had previously promulgated regulations (known as the ''conforming rule'') that combined and conformed rules for Section 8 tenant-based assistance to the extent permitted by prior law. The new tenant-based program has features of the previously authorized certificate and voucher programs, plus new features, as described in the preamble to the interim rule.

HUD provided for a 90-day delayed effective date for the interim rule (in contrast to the customary 30-day delayed effective date for most HUD rules issued for effect), in order to afford public housing agencies (PHAs) additional time to prepare for the implementation of the interim rule. On August 11, 1999, HUD published a notice changing the effective date of the interim rule to October 1, 1999. (See 64 FR 43613.)

This rule does not implement the 1998 Act revisions to the project-based certificate program, which is the subject of 24 CFR part 983. Until HUD issues revisions to part 983, PHAs may continue to provide project-based assistance in accordance with the published part 983.

II. Public Forums

In addition to the comments submitted in response to publication of the interim rule, HUD convened three public forums on the May 14, 1999 interim rule. Section 559 of the 1998 Act requires that before HUD publishes its final rule on the merger of the Section 8 certificate and voucher programs, HUD is to seek recommendations from organizations representing: (1) State or local PHAs; (2) owners and managers of tenant-based housing assistance under section 8 of the U.S. Housing Act of 1937; and (3) legal services organizations. Section 559 also requires HUD to convene not less than two public forums at which the persons or organizations making recommendations may express their views concerning the proposed disposition of their recommendations.

The three public forums convened by HUD on this rule were held in Omaha, Nebraska on May 19, 1999, in Syracuse, New York on June 28, 1999, and in Washington, DC, on July 28, 1999. At each of these forums, forum participants made helpful recommendations and suggestions, discussed issues and exchanged ideas on the merger of the section 8 certificate and voucher programs, especially the requirements established in the May 14, 1999 interim rule. Consistent with the statutory requirements, HUD advised the forum participants of its proposed disposition of the participants recommendations when HUD had formulated a proposed disposition of a specific view or recommendation offered. For certain issues, HUD was unable to offer the forum participants a proposed disposition, because the issues required further deliberation by HUD, but HUD discussed with the participants the considerations involved in HUD's decisionmaking process.

III. Significant Changes Between the May 14, 1999 Interim Rule and This Final Rule

This section highlights the significant changes made to the May 14, 1999 interim rule at this final rule stage. This final rule adopts without change the amendments made to 24 CFR parts 248, 791, and 792 in the May 14, 1999 interim rule. This rule makes a conforming amendment to 24 CFR part 888 and also makes further amendments to several sections of part 982. The major changes made by this final rule to parts 888 and 982 are summarized below. Other changes are also noted in the discussion of the public comments.

- *Amendments to 24 CFR part 888.* The final rule amends part 888, which describes the regulations governing fair market rents and contract annual adjustment factors for the Section 8 housing assistance payment program. Specifically, the final rule revises the part 888 requirements regarding fair market rents to increase the FMR for a manufactured home space rental from 30 percent to 40 percent of the FMR for a two-bedroom unit to reflect the new procedures applicable to manufactured home space rental under the Section 8 Housing Choice Voucher program.
- *Definitions.* The final rule revises § 982.4 (Definitions) to provide three new definitions applicable to the Section 8 Housing Choice Voucher program—''Family rent to owner,'' ''Utility reimbursement,'' and ''Welfare-to-work (WTW) families.'' Additionally, the final rule removes the definitions of ''extremely low income family'' and ''utility reimbursement'' from part 982 and replaces them with a cross-reference to part 5. The definitions of these terms are applicable to several HUD programs. Part 5 was established by HUD to provide the definitions and other program requirements that are generally applicable to HUD programs. Accordingly, it is unnecessary to repeat the definitions of these terms in part 982.
- *Equal opportunity requirements.* The rule revises paragraph (c) of § 982.53 to provide that the actions to affirmatively further fair housing must be in accordance with the requirements of the PHA Plan regulation in 24 CFR 903.7(o).
- *Administrative plan.* The rule revises paragraph (b) of § 982.54 to specify that the PHA's administrative plan is a supporting document to the

PHA plan and must be available for public review.

• *Income targeting.* The final rule amends the income targeting provisions at § 982.201(b)(2). Specifically, the final rule establishes the limited circumstances in which a PHA may admit a percentage of extremely low income families lower than the 75 percent required under the income targeting provisions of the 1998 Act.

• *Local admission preferences.* The final rule amends § 982.207 to provide that a PHA must not deny a local preference, nor otherwise exclude or penalize a family in admission to the programs, solely because the family resides in public housing. Further, the final rule clarifies and emphasizes certain requirements for PHA adoption of residency preferences. For example, the rule specifies that a PHA may only implement residency preferences in accordance with applicable non-discrimination and equal opportunity requirements.

The rule provides that a PHA may establish local admission preferences for: (a) Working families; (b) persons with disabilities; (c) victims of domestic violence; and (d) single persons who are elderly, displaced, homeless, or a person with disabilities.

• *PHA approval of assisted tenancy.* The final rule amends § 982.305(a), which describes the requirements that must be satisfied before a PHA may approve the assisted tenancy. Specifically, the final rule provides that at the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, the PHA must ensure that the family share may not exceed 40 percent of the family's monthly adjusted income.

• *PHA disapproval of owner.* This rule adds to § 982.306(d) a statement that the restriction against a PHA approval of a unit occupied by a family member 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.

• *Lease and tenancy.* The final rule makes various revisions to § 982.308, which sets forth the lease and tenancy requirements under the Section 8 Housing Choice Voucher program. Among other changes, the final rule provides that owners may use another form of lease (such as a PHA model lease) if the owner does not use a standard lease form for rental to unassisted families. The final rule also defines what constitutes ''legal capacity'' to enter into a lease. Further, the rule specifies the minimum information that must be contained in the lease. The final rule also establishes certain requirements regarding changes to the lease or rent. For example, the final rule specifies that all changes to the lease must be in writing. Additionally, the rule specifies that in certain situations, Section 8 assistance will 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.

• *Owner notice of grounds for termination of lease.* This final rule amends § 982.310 (captioned ''Owner termination of tenancy'') to clarify that 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 before the commencement of the eviction action.

• *Portability.* The final rule amends § 982.355, which establishes the portability procedures governing administration by the receiving PHA. The final rule provides that when a family has a right to lease a unit in the receiving PHA jurisdiction, the receiving PHA must provide assistance for the family. Receiving PHA procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA waiting list is not used. However, the receiving PHA may deny or terminate assistance for family action or inaction in accordance with § 982.552 (''PHA denial or termination of assistance for family'') and § 982.553 (''Crime by family members'').

• *PHA unit inspection.* The final rule removes § 982.405(f) of the interim rule. Paragraph (f) of § 982.405 required that a PHA adopt procedural guidelines and performance standards for conducting required HQS inspections.

• *Late payment penalties.* The final rule amends the late payment provisions located in § 982.451(b)(5)(ii). Specifically, the final rule provides that the HAP contract shall provide for penalties against the PHA for late housing assistance payments due to the owner only if all of the following conditions apply: (a) The penalties are in accordance with generally accepted practices and law in the local housing market; (b) it is the owner's practice to charge such penalties for assisted and unassisted tenants; and (c) the owner also charges such penalties against the tenant for late payment of family rent to the owner. The interim rule provision regarding late payment penalties only referenced the first condition identified above (*i.e.*, generally accepted local practice and law).

• *Owner breach of contract.* The final rule revises § 982.453 (captioned ''Owner breach of contract''). Specifically, the final rule expands the list of owner actions considered to be a breach of the HAP contract to include violent criminal activity.

• *Payment standard for pre-merger voucher tenancies.* The final rule revises § 982.502, which establishes the requirements governing conversion to the Section 8 Housing Choice Voucher program. The interim rule (and this final rule) provide that if the PHA entered into a HAP contract for a voucher tenancy before the merger date, the tenancy will continue to be considered and treated as a tenancy under the voucher program, and will be subject to the voucher program requirements of part 982. The final rule revises § 982.502 to remove the provision for a shopping incentive for over-FMR certificate tenancies before the effective date of the second regular reexamination of family income and composition on or after the merger date. The shopping incentive was never applicable to over-FMR certificate tenancies and will not be triggered by conversion of these families to the voucher program.

• *HUD approval of payment standard amount below the basic range.* The final rule amends § 982.503 (captioned ''Voucher tenancy: Payment standard amount and schedule'') to provide that HUD, in its sole discretion, may approve a PHA request for approval to establish a payment standard amount that is 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.

• *How to calculate housing assistance payment.* The final rule amends § 982.505 (captioned ''Voucher tenancy: How to calculate housing assistance payment''). Specifically, the final rule provides that during the first 24 months of the HAP contract, the payment standard for a family is the higher of: (a) the initial payment standard (minus any amount by which the initial rent to owner exceeds the current rent to owner); or (b) the payment standard, as determined at the most recent regular reexamination of family income and composition after the beginning of the HAP contract term. After the first twenty four months of the HAP contract term, the payment standard is the

payment standard as determined at the most recent regular reexamination of family income and composition after the beginning of the HAP contract term.

• *PHA denial or termination of assistance for family.* The final rule revises § 982.552(c)(1)(x) to elaborate on factors that a PHA may consider in its decision to deny or terminate assistance because of action or failure to act by members of the family.

• *FMR for manufactured home space.* As explained in more detail in the comment section of this preamble, the final rule amends § 982.623 (captioned ''Manufactured home space rental: Housing assistance payment'') to provide that the FMR for a manufactured home space is generally 40 percent of the published FMR. Previously, the FMRs for manufactured home spaces were based on a 30 percent figure.

IV. Discussion of Public Comments.

The public comment period closed on July 13, 1999. During that period, HUD received written comments from PHAs; regional/State housing agencies; organizations representing PHAs; organizations representing women who are victims of domestic violence; legal services organizations; advocates for persons with disabilities; low income housing advocates; and various other organizations and individuals. At the close of the public comment period, HUD had received 97 written comments. The summary of public comments that follows presents the major issues, recommendations and questions raised by the public on the May 14, 1999 interim rule, whether made at the public forums, or provided as written comments during the 60-day comment period on the rule.

The summary is organized by regulatory section (e.g., § 982.201). The underlined headings that follow each regulatory section present the issue and are followed by a brief description of the comment. Comments that are not directed to a specific regulatory section are described under the heading ''Miscellaneous comments''.

As previously indicated, the interim rule published on May 14, 1999 (as modified by the technical corrections published on September 14, 1999) was effective on October 1, 1999 and PHAs must implement that rule beginning October 1, 1999. This final rule includes additional changes to the interim rule, which PHAs must implement beginning on the effective date of this rule.

Section 982.4 Definitions.

Comment: Definition of PHA. HUD should revise the definition of PHA to include non-profit disability organizations administering the Section 8 Mainstream Program for people with disabilities.

HUD response. The rule contains the United States Housing Act of 1937 (42 U.S.C. 1437n(d)) (1937 Act) definition of ''PHA.'' In addition to the traditional definition of a PHA as a governmental entity or public body authorized to administer a 1937 Act program, for administration of the tenant-based program only, the rule includes in the definition of ''PHA'' additional entities: a consortium of PHAs; a non-profit entity administering certificates or vouchers under a contract with HUD or a PHA on October 21, 1998; and for any area outside the jurisdiction of a PHA with a tenant-based program or where HUD determines that the PHA is not administering the tenant-based program effectively, a private non-profit or governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area. A minor correction is made to this provision in this final rule.

Comment: Definition of ''tenant rent''. Tenant rent should be defined as ''The amount payable by the tenant as rent to the unit owner. In the certificate program, it is the total tenant payment minus any utility allowance.''

Rule needs to clarify whether the method of determining total tenant payment (TTP) in the Admissions and Occupancy proposed rule (published April 30, 1999) at § 5.613 will apply to the voucher program. Section 982.505 incorporates the TTP concept, but § 5.601(a)(2)(ii) of the current rule states that the definitions of ''total rent'' and ''total tenant payment'' do not apply to the voucher program. Clarification is needed.

HUD response. The definition of TTP in part 5 will apply to the voucher program resulting from the merger of the certificate and voucher programs. However, the definitions of tenant rent and utility reimbursement in part 5 will not apply to the voucher program. Instead, in this part 982 rule, the term ''family rent to owner'' is used instead of ''tenant rent.'' Definitions of ''family rent to owner'' and ''utility reimbursement'' for the voucher program were added to § 982.4. Family rent to owner is the portion of the rent to owner paid by the family. Family rent to owner is calculated by subtracting the housing assistance payment to the owner from the rent to owner. A utility reimbursement in the voucher program is the portion of the housing assistance payment which exceeds the rent to owner. A utility reimbursement is only paid when the housing assistance payment exceeds the rent to owner.

Comment: Merger date of August 12, 1999. PHAs expressed concern about the merger date of August 12, 1999 because (1) the Admissions and Occupancy proposed rule, published April 30, 1999 (64 FR 23460), covered related topics; (2) HUD needs to revise the voucher contracts and forms; and (3) PHAs need to obtain computer software capable of implementing the changes required by part 982.

HUD response. In a **Federal Register** notice of August 11, 1999 (64 FR 43613), HUD extended the merger date defined in § 982.4 of the interim merger rule to October 1, 1999.

Section 982.53 Equal opportunity requirements.

Comment: State equal opportunity requirements. The language in § 982.53(d) needs to be expanded to include not only State laws but also local ordinances. These tools are used increasingly by local communities to promote fair housing.

HUD response. Section 982.53(d) was revised to change the ''state law'' references to ''State and local laws''.

Comment: Affirmatively furthering fair housing requirements. The language of the section is too broad, requiring PHAs to take undefined actions based on undefined criteria. HUD should require PHAs to establish mechanisms to respond to complaints of discrimination in the Section 8 program, including informing voucher holders of their rights and the remedies available to them. This provision also should require conformity with any city or county laws that prohibit discrimination.

The final rule should provide that the PHA must refrain from actions that are discriminatory or segregative, or that perpetuate the effects of past discrimination or segregation by the PHA; administer the program to remedy past discrimination and segregation in PHA programs and local government policies; administer the program to promote fair housing rights and choice; eliminate impediments to fair housing choice; and remedy the effects of discrimination and segregation in the market. HUD needs to clarify what it means by ''impediments to fair housing choice''.

HUD response. Many of the changes sought by the commenters are part of existing rules. For example, under § 982.301(b), PHAs must include information about federal, State and local equal opportunity requirements and housing discrimination complaint forms in the briefing packet given to

new families. Section 982.304 specifies that the PHA must give the family information on how to fill out and file a housing discrimination complaint if the family claims that illegal discrimination has prevented the family from finding or leasing a suitable unit. In addition, § 982.52 specifies that the voucher program requires compliance with all equal opportunity requirements imposed by contract or federal law and the PHA must submit a signed certification that it will administer the program in conformity with civil rights laws.

The PHA obligation to affirmatively further fair housing is identical to the requirement contained in the PHA plan final rule. It is important to note that in implementing program changes covered by the 1998 Act, both HUD and the PHA must ensure compliance with applicable nondiscrimination requirements and affirmatively further fair housing. The PHA obligation to affirmatively further fair housing is specifically required by both the part 982 (the housing choice voucher program) and part 903 (the PHA plan) rules.

Section 982.54 Administrative plan.

Comment: Section 8 administrative plan. HUD should eliminate a separate Section 8 administrative plan and incorporate the information required by this plan in the PHA plan. A separate Section 8 administrative plan should apply only to those PHAs that are not yet operating under an approved PHA plan.

HUD response. Notice PIH 99–33 (HA) issued on July 30, 1999, provided further PHA plan instructions, including a mandatory electronic template for submission of the PHA plan. As stated in the HUD notice, PHAs will provide statements of policy using short responses and by checking boxes in the PHA plan template. To ensure that the public has access to detailed information about all of the PHA's discretionary policies, the HUD notice calls for the administrative plan to be a supporting document to the PHA Plan and available for public review. Therefore, the PHA will not be required to repeat administrative plan information in the PHA plan.

Section 982.151 Annual Contributions Contract.

Comment: Funding. There should be no reduction in assistance amounts based upon differences between the Fair Market Rent (FMR) and payment standards in existing voucher Annual Contribution Contracts (ACCs) and merged ACCs. All funding must be transferred.

HUD response. Conversion to the merged program will not result in the loss of PHA funding for the Section 8 program. HUD is publishing a separate rule on renewal funding for the Section 8 tenant-based assistance program.

Section 982.152 Administrative fee.

Comment: Administrative fees. The final rule needs more specific guidance on when to apply for additional administrative funds, because PHAs may be reluctant to apply for such fees.

HUD response. Guidance concerning PHA administrative fees is published annually in the **Federal Register** and in HUD handbooks and notices.

Comment: Administrative fee bonuses for high performers. This section should provide for an additional administrative fee as a bonus or incentive to particularly high-performing PHAs, if HUD chooses to develop such an incentive.

HUD response. The statute does not permit HUD to provide bonus administrative fees to high performance PHAs.

Comment: Additional administrative fees for conversion to the merged program. HUD should provide additional administrative fees to facilitate conversion, and HUD should convert the certificate program quickly while ensuring rent neutrality through appropriate voucher payment standards.

HUD response. There are no funds available for this purpose; the statute does not permit HUD to provide PHAs with additional administrative fees to facilitate the merger.

Section 982.154 ACC reserve account.

Comment: ACC reserve account. A change in language (from the word ''establishes'' to ''may'') will open the door to the elimination of individual PHA reserve accounts. It is both prudent and essential for the efficient operation of the Section 8 program that PHAs have access to funds for various unexpected cost increases. HUD should change the language back to the word ''establishes''.

HUD response. The text of § 982.154(a) was changed in the May 14, 1999 interim rule to more clearly reflect the fact that HUD has discretion to determine the amount of the ACC reserve account as provided in the ACC for many years. This change in regulatory text does not signal a change in HUD authority to determine the amount of the ACC reserve account. HUD is publishing a separate rule on renewal funding, which will address the ACC reserve account.

Section 982.162 Use of HUD-required contracts and other forms.

Comment: HUD forms and contracts. HUD needs to revise its required contracts in a timely manner and have an adequate supply for PHAs.

HUD response. The merged program housing assistance payments (HAP) contract (form HUD–52641) and tenancy addendum (form HUD–52641–A) are posted on the HUD web at www.hudclips.org. Until other contracts and forms are issued, PHAs may continue to use the current voucher program forms (e.g., rental voucher and HAP contract for leasing manufactured home spaces).

Section 982.201 Eligibility and targeting.

Comment: Targeting requirements effect on welfare reform and working poor. Targeting that limits assistance to extremely low income families is contrary to welfare reform efforts and will deny assistance to the working poor. Targeting rewards welfare recipients by moving them up on PHA waiting lists. Conversely, the rule penalizes the working poor by moving those individuals further down the list.

HUD response. The targeting requirements are statutory, but the rule permits variations where needed and as authorized by the statute. Section 16(d) of the 1937 Act provides that at least 75 percent of annual admissions to the Section 8 tenant-based assistance program must be families whose incomes do not exceed 30 percent of area median income. In the final rule, such families are called ''extremely low income families'', a new term defined at § 5.603 of this title.

The statute permits HUD to exercise some discretion to modify the impact of the statutory requirement to target 75 percent of a PHA's tenant-based program admissions to extremely low income families. Section 16(b)(1) of the 1937 Act permits HUD to establish the extremely low income limit higher or lower than 30 percent of area median income where HUD determines a higher or lower limit is necessary because of unusually high or low incomes.

HUD has determined that one-person households with incomes below their State Supplemental Security Income (SSI) benefit level are of unusually low income and that a modification to the income limit for extremely low income determination standards was needed. HUD issued Notice PDR 99–04 (on July 21, 1999) to make changes in the Section 8 existing housing extremely low income limit determinations. The extremely low income limit amounts have been increased wherever necessary

so that the one-person 30 percent of median income limit is at least as high as the State SSI benefit level.

HUD will not make further adjustments to this year's 30 percent of area median income determination to accommodate minimum wage households. Such a change would go far beyond other adjustments and drastically alter the thirty percent standard.

In addition, under the authority of section 16(d) of the 1937 Act, a provision has been added to the final rule that allows a reduced targeting percentage for welfare-to-work voucher admissions, only if and to the extent the PHA has demonstrated that compliance with the targeting obligations for such welfare-to-work families would interfere with the objectives of the welfare-to-work voucher program. HUD expects this authority to be needed only in exceptional circumstances.

Comment: Lower targeting requirements for good cause. The rule must specify the standard for good cause requests made by PHAs to establish different targeting requirements, and what documentation the PHAs must provide to HUD. The rule should provide that a targeting exception will be granted only in unusual or extraordinary circumstances.

HUD should consider fair housing concerns and the consolidated plan in approving a different targeting percentage.

HUD response. HUD has authority under section 16(d) of the 1937 Act to approve for good cause PHA establishment and implementation of different targeting requirements for the PHA's Section 8 tenant-based program, in accordance with the PHA plan. HUD will carefully scrutinize all requests for targeting exceptions and will only approve exceptions on a case-by-case when fully justified by exceptional circumstances. The final rule adds provisions that specify two cases when a PHA may adopt a different targeting standard:

—When HUD has approved a lower targeting requirement for a PHA in accordance with specific good cause standards specified in the rule, which are designed to demonstrate that the PHA is not able to find a sufficient number of extremely low income families to fill available program openings despite outreach and marketing and that the vouchers will substantially address worst case housing needs.

—The targeting disregard for families that receive vouchers funded under the HUD welfare-to-work program (or a renewal of that funding) explained above.

The following is a more detailed description of the first type of targeting exception. In both cases, the use of a modified targeting standard must be consistent with the PHA plan. In addition, any HUD approval of a targeting exception must be consistent with the PHA obligation to administer the program in a manner that affirmatively furthers fair housing.

The rule provides that a PHA may admit less than seventy five percent of extremely low income families during the PHA fiscal year if HUD determines there is good cause for, and approves the use of, a lower targeting standard by the PHA. HUD may approve a lower targeting requirement if HUD determines that:

(1) 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 nonmetropolitan county, both within and without the PHA jurisdiction;

(2) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to reach such families, including families on waiting lists of other PHAs in the same MSA or nonmetropolitan county.

(3) 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.

If there are not enough extremely low income families to fill available program slots during the PHA fiscal year, even though the PHA has opened the waiting list, given public notice, and conducted outreach and marketing and the vouchers will address worst case housing needs, then HUD may approve the PHA's use of a lower targeting standard.

Comment: Higher targeting goals. The rule should permit PHAs to meet their targeting obligations by targeting at least 75 percent of newly available vouchers to households with incomes below 20 or 25 percent of area median income.

HUD response. The statute requires that at least 75 percent of new admissions be families having incomes up to 30 percent of median. At its option, a PHA may choose to limit admissions to families with incomes lower than 30 percent of area median income. The extremely low income limit is the maximum qualifying income. Any family with an annual income below the extremely low income limit counts as an extremely low income family, and the admission of such a family counts toward satisfaction of the PHA's targeting responsibilities.

Comment: Targeting requirements effect on the Section 8 homeownership program. By giving preference to welfare recipients, the targeting limits negate the impact of HUD's recently issued Section 8 homeownership proposed rule, published April 30, 1999 (64 FR 23488).

HUD response. HUD anticipates that most participants in the Section 8 homeownership program will be current program participants, not applicants. Since families continuing to receive assistance under the 1937 Act are not considered as new admissions, their income levels are not examined for compliance with income targeting requirements. Therefore, the income targeting requirements may have minimal impact on the implementation of the Section 8 homeownership program.

Comment: Targeting requirements effect on deconcentration goals and the number of families assisted. Targeting goals conflict with deconcentration goals. The targeting policy may add additional cost to the Section 8 tenant-based program, reducing the number of families assisted.

HUD response. The statutory and regulatory targeting requirement is designed to assure that available assistance funds are targeted to the families that need it most. HUD is making adjustments in the final rule to assure reasonable use of the program by eligible families by allowing targeting exceptions in accordance with the law, as described above. Although assistance is targeted to extremely low income families, such families have the right to move anywhere in the PHA jurisdiction and may also receive housing assistance outside the PHA jurisdiction under portability procedures.

Comment: Income used to determine ''extremely low income''. Adjusted income should be used to calculate targeting limits. Using adjusted income in the determination of income targeting requirements would be more appropriate, since it provides a more realistic picture of those persons in need of housing assistance.

HUD response. HUD has not made the recommended change. Annual income, not adjusted income, is compared to the income limits to determine whether the family is extremely low income. Use of annual income for this purpose is consistent with both the statute and the method used to determine whether the family is very low income, low income, or moderate income.

Comment: Income targeting implementation. Will PHAs be forced to skip very low income families on the waiting list to attain the required percentage of extremely low income families? HUD should provide directions for waiting list management. Will program slots be held open until there are enough extremely low income applicants so that the 75 percent admission requirement is satisfied, or should such slots be filled by other eligible applicants until there is an extremely low income applicant?

HUD response. HUD expects to provide further guidance on techniques for implementation of the income targeting requirements, and other questions concerning requirements under this rule. Meeting the income targeting requirements will require skipping higher income families on the waiting list as necessary to satisfy the PHA's annual targeting requirement.

Comment: Effect of portability on targeting requirements. If a family moves under portability, is the admission counted against the initial PHA or the receiving PHA? If a family exercises its right of portability, and the recipient PHA decides to absorb the family, does the admission count toward the recipient PHA's targeting goal, or does the admission always count toward the initial PHA's targeting goal? If the receiving PHA bills but does not absorb, is the family classified as a new admission? May a proposed recipient PHA refuse to accept a porting family if acceptance will cause the recipient PHA to fall below its targeting requirement? If a recipient PHA bills the initial PHA for a participating family and the recipient PHA later decides to absorb the family, does the absorption count as an admission for the purposes of income targeting?

HUD response. Admission of an applicant family that moves under portability procedures is charged against the initial PHA's targeting obligation—even if the family is initially assisted at the receiving PHA—if the receiving PHA bills the initial PHA. The admission is included in the initial PHA base of annual admissions (to which the 75 percent minimum targeting percentage is applied). If a portable family is an extremely low income family at the time of admission, the admission also counts toward satisfaction of the initial PHA's minimum targeting percentage.

As in the past, ''admission'' is the first execution of a HAP contract by a PHA on behalf of a family. For purposes of targeting, the initial PHA counts the admission of the portable family as an extremely low income admission if the family's annual income is at or below 30 percent of median income at the location of the housing where the family is initially assisted at admission to the program (in the jurisdiction of the receiving PHA—if the family is initially assisted (admitted in the receiving PHA jurisdiction).) If a portable family is not an extremely low income family when admitted to the program (in the initial PHA or receiving PHA jurisdiction), the admission does not count towards meeting the initial PHA's income targeting requirements. However, if the receiving PHA decides to absorb the portable family (at admission), the receiving PHA counts the family towards the receiving PHA's targeting requirements.

Comment: Targeting requirements for PHAs with identical jurisdictions. The rule provides that two or more PHAs with identical jurisdiction must jointly meet the targeting goals. No PHA should be responsible for the action of another PHA. This requirement unfairly penalizes a high-performing PHA that has the identical jurisdiction as a troubled PHA.

HUD needs to define the meaning of ''identical jurisdiction.'' Does ''overlapping'' mean the same as ''identical''?

HUD response. The final rule has been revised to clarify—in accordance with the law, and as intended by the interim rule—that the requirement to jointly meet income targeting requirements only applies when the geographic jurisdictions of two or more PHAs are ''identical''—not merely overlapping, as is frequently the case for county, regional and state PHAs. Thus, the obligation for PHAs to coordinate their income targeting only applies if every part of the jurisdiction of each PHA is also the jurisdiction of the other PHA. Section 982.201(b)(2)(v) was also revised in the final rule to require that coordination of income targeting only applies if the PHAs with identical jurisdictions agree to being treated as a single jurisdiction for purposes of income targeting.

Comment: Income limit for issuance of a voucher. The reference to ''family unit size'' in § 982.201(b)(4) of the interim rule should be just ''family size.''

HUD response. HUD made the recommended change in the technical corrections to the interim rule that were published in the **Federal Register** on September 14, 1999 (64 FR 49656).

Comment: Income limit for admission. Section 982.201(b)(4) of the interim rule seems to permanently limit the use of a voucher to only those areas for which the family was eligible for admission. In reality, once admitted, the family is able to move to any area. The last sentence of paragraph (b)(4) should be revised to read: ''At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.''

HUD response. HUD has adopted this recommended change.

Section 982.202 How applicants are selected: General requirements.

Comment: Local admission preferences: income skipping. The prohibition against local preferences for admission of higher income families over families of lower income (§ 982.202(b)(3)(ii)) is not required by statute and should be deleted. It is inconsistent with the intent of the targeting requirements of the 1998 Act (section 513). Unlike the express prohibition on income-skipping in the project-based component of the Section 8 program, the parallel provision concerning income targeting in the tenant-based Section 8 program says absolutely nothing about income-skipping. Silence in the statute should not be interpreted as a prohibition of income-skipping.

HUD response. HUD has decided to continue this requirement. Continuation of this requirement will help to ensure that extremely low income families are admitted to the tenant-based program.

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

Comment: Local admission preferences: victims of domestic violence. PHAs should consider preferences for individuals who are victims of domestic violence, as provided in HUD's admission and occupancy proposed rule (published in the **Federal Register** on April 30, 1999, 64 FR 23460).

HUD response. The 1998 Act states that it is the ''sense of Congress'' that each PHA involved in selection of families assisted in the public housing program, or in the Section 8 tenant-based assistance program, ''should * * * consider'' preferences for individuals who are victims of domestic violence (section 514(e) of the 1998 Act). HUD has amended this rule to provide that the PHA ''should consider'' whether to adopt a local preference for admission of families that include victims of domestic violence (§ 982.207). After such consideration, the PHA may or may not choose to adopt such a preference.

Comment: Local admission preferences: preference for elderly, disabled and displaced over other singles. May a PHA continue to provide

an admission preference to elderly, disabled and displaced single persons over other single persons?

HUD response. Yes. Even though the 1998 Act repealed the requirement that PHAs must provide an admission preference to single persons who are elderly, disabled, or displaced persons before other single persons, the PHA may opt to continue this practice as part of its local admission preference policies.

Comment: Local admission preferences: equal opportunity requirements. The final rule should provide that HUD will approve an admission preference only if it is consistent with civil rights laws and affirmatively furthers fair housing.

HUD response. By law, the PHA may adopt local preferences in accordance with local housing needs and priorities as determined by the PHA. HUD does not approve the PHA's local admission preferences. HUD only conducts a limited review to determine whether the PHA's selection procedures ''are consistent with information and data available to [HUD],'' and ''are not prohibited by or inconsistent with applicable law'' (section 511 of the 1998 Act, adding section 5A(i)(1) of the 1937 Act).

The PHA's local admission preferences must be consistent with the PHA plan and the consolidated plans for local governments in the PHA jurisdiction. Of course, PHAs must administer tenant-based assistance in conformity with civil rights laws and must affirmatively further fair housing. Equal opportunity requirements are specified in § 982.53.

Comment: Local admission preferences: local housing needs. In light of the demand and need for affordable housing, HUD should require that all admission preferences used by the PHA should be based on local housing needs.

HUD response. Sections 982.207(a)(1) and (2) reflect the statutory requirements for local preferences in the merged program. The regulations require that the PHA system of local preferences be based on local housing needs and priorities, as determined by the PHA. The PHA must use generally accepted data sources in determining local housing needs and priorities, and must consider public comment on the PHA plan and the jurisdiction's consolidated plan.

Local admission preferences: waiting list. The rule should explicitly require PHAs to consider the needs of persons on their waiting list in determining local preferences.

The rule should provide that the waiting list is a ''generally accepted data source'' to be used by the PHA in determining housing needs and priorities.

HUD response. PHA waiting lists may be an excellent source of local housing needs information in some communities, and an unreliable data source in other communities. PHA practices in purging or updating their waiting lists vary widely. Some PHAs periodically close the waiting list, while other PHAs have never closed the waiting list since the program began in 1975. For these reasons, HUD is not mandating use of the waiting list as a basis for local admission preferences.

Comment: Local admission preferences: preference for workers. The rule currently provides that a PHA which grants an admission preference to a family who is employed must grant the same preference to people with disabilities and to the elderly. This requirement should be included in the final rule.

HUD response. The rule is revised to clarify that the PHA may establish a preference for admission of working families (§ 982.207(b)). An applicant family must be given the benefit of the working family preference if the head and spouse, or sole member is either age 62 or older or a person with disabilities.

Comment: Local admission preferences: public housing tenants. HUD should retain the prohibition against Section 8 preferences that discriminate against public housing tenants.

HUD response. The 1998 Act repealed the statutory requirement (the so called ''Bartlett amendment'') that a PHA must permit public housing tenants to retain their pre-public housing preference status on the PHA's Section 8 waiting list. This prior requirement has therefore been removed from the program rule.

However, the Congress has not repealed section 8(s) of the 1937 Act (42 U.S.C. 1437f(s)), which provides that a PHA must not deny a local preference, nor otherwise exclude or penalize a family in admission to the voucher program, solely because the family resides in a public housing project. HUD has, therefore, added a new provision that specifies this continuing statutory requirement (§ 982.207(a)(4)). In addition, the regulation clarifies that a PHA may establish a preference for public housing residents who are victims of a crime of violence.

Section 982.303 Term of voucher.

Comment: Voucher term extensions. HUD should grant PHAs discretion to extend voucher time limits if a discrimination complaint has been filed with a proper fair housing enforcement agency, in connection with reasonable accommodation requests, and to increase housing choice opportunities.

HUD response. The final rule is revised to allow PHA discretion to extend the cumulative voucher term beyond the prior 120 day limit, whether for reasonable accommodation or other good cause determined by the PHA and stated in the administrative plan (§ 982.303(b)). This change will permit additional local administrative flexibility consistent with the Congressional policy to grant PHAs maximum local discretion in administration of their programs.

Section 982.305 PHA approval of assisted tenancy.

Comment: 15-day initial inspection requirement for PHAs with 1250 units or less. The 15-day Housing Quality Standards (HQS) inspection requirement is not reasonable for rural areas, where rental units are scattered and often located miles away from a PHA office. The final rule should provide rural PHAs with the same flexibility the interim rule currently provides large PHAs in complying with the HQS inspection requirements.

HUD should permit all PHAs (regardless of size) to comply with HQS inspection requirements within a ''reasonable time''.

All PHAs should be required to comply with the 15-day inspection requirement. Failure to conduct a timely HQS inspection imposes a serious hardship on the family because voucher assistance cannot commence until completion of the inspection. Therefore, a family must usually pay a market rent for the unit pending completion of the HQS inspection.

PHAs faced with uncooperative tenants or owners should be exempted from the 15-day inspection requirement.

HUD response. The 15-day initial HQS inspection standard is statutory and applies to all PHAs with 1250 or fewer budgeted tenant-based Section 8 units. The law provides a different standard for PHAs with more than 1250 budgeted units. HUD does not have discretion to provide rural (or non-rural) PHAs with relief from the 15-day deadline unless a PHA has more than 1250 units.

Although HUD cannot exempt PHAs faced with uncooperative owners or tenants from the initial HQS inspection deadline, the regulation provides that the 15-day clock begins after both the family and owner request approval of the tenancy, and the 15-day clock is

suspended during any time when the unit is not available for inspection. ''Not available for inspection'' encompasses a multitude of reasons why the unit is unavailable, including lack of cooperation by tenants or owners.

HUD expects to enforce the 15-day inspection deadline by including this element in the PHA's SEMAP rating, after appropriate rulemaking.

Comment: 15-day initial inspection requirement for PHAs with more than 1250 units. HUD lacks authority to establish a presumptive standard of 15 days for inspections by large PHAs. The law only requires a maximum 15-day inspection period for PHAs with 1250 or fewer assisted units. For PHAs that provide assistance to more than 1250 families, the statute requires that pre-assistance inspections be conducted ''before the expiration of a reasonable period.'' The interim rule text requires PHAs with more than 1250 units to conduct the initial HQS inspection within a reasonable time after the family submits a request for approval of the tenancy and, to the extent practicable, within 15 days after the family and the owner submit a request for approval of the tenancy.

The rule should provide that the period for PHA inspection of the unit is tolled during any period when the unit is not available for inspection.

HUD response. The interim rule provides that PHAs with more than 1250 units must conduct the initial HQS inspection within a reasonable time after the family submits a request for approval of the tenancy. To the extent practicable, the inspection must be conducted within 15 days after the family and the owner submit a request for approval of the tenancy to the PHA. These provisions are an appropriate exercise of HUD's rulemaking authority in implementing the statutory inspection requirements for large PHAs. If it is practicable for a PHA to conduct the inspection within 15 days, then 15 days is a reasonable inspection deadline, and is consistent with the law.

The interim rule already provides for suspending the clock for all PHAs when the unit is not available for inspection.

Comment: Applicability of rent burden cap to lease renewals. The rule should require PHA approval of renewal tenancies. The rule should also provide that the PHA may not approve a renewal tenancy unless the family share (rent—including tenant-paid utilities—minus the Section 8 subsidy payment) does not exceed 40 percent of the family's adjusted income.

HUD response. The 40 percent rent burden threshold does not apply to lease renewals. The 40 percent rent burden threshold only applies when a unit is first leased by a family (on or after October 1, 1999—the effective date of the merger rule) with tenant-based assistance under the voucher program. Thus the maximum rent burden requirement applies to: (1) the initial rent for the unit rented with voucher assistance by a family when admitted to the voucher program on or after October 1, 1999 (the merger date); and (2) the initial rent for any unit a participant first rents with voucher assistance on or after October 1, 1999—*i.e.*, to all moves by program participants on or after October 1, 1999.

Section 932.306 PHA disapproval of owner.

Comment: Optional PHA disapproval of owners. HUD should provide an appeals process for owners prohibited from participating in the program. HUD should act as independent arbitrator between the PHA and the owner.

There must be clear definitions and processes for implementing this provision; otherwise, the provision may used to deny Section 8 contracts to owners where local governmental officials or ''influential'' residents simply do not want Section 8 families.

Section 982.306(c)(5) of the interim rule provides that the PHA is authorized to disapprove an owner if the owner has a history or practice of ''failing'' to terminate tenancy of the undesirable tenants described in the statute. The statutory language does not use the term ''fail'' but uses the term ''refuse.'' This minor change from the statutory language may seem innocuous, but in practice it can be significant. This section needs to conform to the statutory language.

HUD's HUB offices should consider coordinating information in multi-State metropolitan areas to minimize chances for ''bad'' landlords to become Section 8 program participants by ''PHA-shopping.''

HUD response. Owners have no statutory or regulatory right to participate in the housing choice voucher program, and consequently have no due process right to a hearing on a PHA's decision to disapprove owner participation. There is no federal mandate for PHAs or HUD to grant owners a process for appeal of a PHA decision to disapprove owner participation. The PHA has discretion whether to provide a local review or appeal process to owners disapproved by the PHA for the reasons authorized by the regulations, and the nature of any such process.

HUD has not substantively changed the statutory requirement. HUD considers the term ''fail'' more appropriate to and consistent with the statutory requirement, and clarifies that the PHA's authority to disapprove an owner does not require a specific PHA demand and refusal of the PHA demand by the owner. This implementation of the law is within HUD's rulemaking authority.

HUD will explore ways too coordinate this information as suggested by the commenters. In the meantime, PHAs may wish to establish a communication process to share information about owners denied participation in the voucher program.

Section 982.307 Tenant screening.

Comment: Optional PHA screening of applicants: General. HUD should eliminate the option for PHAs to screen family behavior or suitability for tenancy. Does the PHA now owe any obligation to the landlord and can a participant appeal this determination?

The voucher program is based on the private market principle that prospective private landlords (not PHAs or other third parties) can best determine a family's suitability for tenancy. The only purpose of PHA screening should be the provision of supplemental information for prospective private landlords.

PHAs should be encouraged to share their screening information regarding family behavior and suitability for tenancy to owners to assist owners in making the required independent determination of suitability of potential tenants.

The rule needs to clarify that the final decision on tenant acceptability rests with the owner. The PHA can choose to collect screening information and provide it to the private owner, but it is up to the private owner, based on this information, to make a decision on acceptability. However, if the final rule authorizes PHA denial of admission based on screening criteria, the rule must establish clear, objective and non-discriminatory guidelines on screening criteria.

HUD response. The 1998 Act provides that PHAs ''may elect to screen applicants for the [housing choice voucher] program in accordance with such requirements as [HUD] may establish''. This final rule permits PHA screening of program applicants, and permits the PHA to deny admission as a result of the screening. In accordance with existing program requirements, the PHA must give the opportunity for informal review of the PHA decision to deny program admission as a result of the PHA screening.

PHAs may establish local screening criteria. PHAs are encouraged to share screening information, when practicable. It is important to note, however, that regardless of whether the PHA opts to screen applicants, the owner remains responsible for screening and selection of the family to occupy the owner's unit.

Comment: Optional PHA screening of applicants: equal opportunity concerns. Screening will disproportionately exclude person with physical or psychological disabilities. The final rule should require PHAs to consider measures for reasonable accommodation of disabilities before making a final decision to reject an applicant.

HUD response. PHAs must administer tenant-based assistance in conformity with civil rights laws and affirmatively further fair housing. Equal opportunity requirements are specified in § 982.53. In addition, PHA denials of admission are subject to the program requirements concerning informal reviews.

Comment: Optional PHA screening of applicants: PHA plan. A PHA's screening criteria should be part of the PHA plan, and should be subject to public and resident scrutiny and comment.

HUD response. Any PHA screening criteria will be included in PHA administrative plan which is a supporting document to the PHA plan and available for public review.

Comment: Optional PHA screening of applicants: portability. The portability provisions must continue to allow the receiving PHA to screen participants with portable vouchers based on the receiving PHAs local policies consistent with § 982.307.

HUD response. The receiving PHA may opt to screen the portable family using the receiving PHA's screening criteria only if the family is not a current participant in the tenant-based program (i.e., the family is not receiving housing assistance pursuant to a certificate or voucher HAP contract).

Section 982.308 Lease and tenancy.

Comment: Tenant's legal capacity. Additional guidance is required regarding the tenant's legal capacity.

HUD response. The rule is revised to specify that the tenant must have legal capacity to enter a lease under State and local law, and that ''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 (§ 982.308).

Comment: PHA model lease. In several jurisdictions, most landlords use no written lease at all. In some jurisdictions, some landlords do not use a written lease. If the lease term is not defined, PHAs will not be able to plan reinspections and lease renewals in advance. Many landlords rely on a PHA to provide the written lease. Further, the landlords' standard leases might contain clauses that are contradictory to Section 8 voucher program requirements.

HUD response. Section 982.308(b)(2) was revised to specify that 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. The regulations provide that a participating owner must certify that the terms and conditions of the lease are consistent with State and local law. It will be a violation of the HAP contract if the owner certification of lease consistency with State and local law is deficient.

Comment: Prohibited lease provisions. A list of prohibited lease provisions should be required by the final rule. The ''tenancy addendum'' is a HUD form that is not subject to rulemaking procedures, and the courts may not have access to the addendum or know what weight to give the addendum.

HUD response. The recommendation is inconsistent with the statutory provision, which requires use of the lease that the owner uses in the locality. Congress revised the lease provisions to minimize differences between voucher tenancies and unassisted tenancies to facilitate expanded owner participation in the Section 8 voucher program.

Comment: Lease and Tenancy Addendum. Many property owners may refuse to sign a written lease, but they will sign the HUD lease addendum. To ensure a broad range of housing choice, the only required rental agreement should be the HUD lease addendum. The voucher recipient should be allowed the choice of a verbal agreement or any type of written rental agreement or lease sufficient for execution of a HAP contract.

The tenancy addendum should not be part of the HAP contract. There is an inherent conflict between including a legal document to be signed by the owner and tenant, as an attachment to or part of a lease, in a document (the HAP contract) to be signed by the owner and the PHA, and barring the tenant from using any legal process to involve the PHA in its enforcement.

The regulations do not provide the tenant with all enforcement tools that it may need to protect itself from a bad landlord.

HUD response. The statute now requires use in the voucher program of the lease the owner uses in the locality. The HUD-prescribed tenancy addendum states the special requirements of a voucher tenancy in accordance with federal law, but is not intended to be a substitute for a complete lease. The lease is composed of two parts: The owner's standard form lease, plus the federal tenancy addendum.

Section 982.456 clarifies that the tenant is authorized to enforce rights under the tenancy addendum, but does not have the right to enforce other provisions of the HAP contract. The statute (section 8(o)(7)) specifically authorizes HUD to specify an addendum to the HAP contract concerning the lease and the assisted tenancy. Accordingly, the tenancy addendum, dealing with requirements of tenancy, is included in the HAP contract executed between the PHA and owner. However, since the tenancy addendum also sets forth owner lease obligations, HUD has required that the tenancy addendum also be part of the lease executed by the tenant and the owner, directly enforceable by the tenant against the owner. The requirement that the tenancy addendum be part of the lease assures tenant access to a legal process to enforce the rights contained in the tenancy addendum.

HUD has reexamined its position concerning whether a minimal amount of leasing information is needed since leases vary widely, and some owners do not typically provide a written lease. Accordingly, § 982.308(d) of the final rule provides that the lease must include, in addition to the utilities and appliances to be furnished by the owner, the names of the owner and tenant, the address of the unit rented, the term of the lease, and the amount of monthly rent to owner.

Comment: PHA approval of the lease. Final rule should require that the lease be approvable by the PHA. The only practical way to make sure that an owner's lease complies with State and local law is for the PHA to review and approve the lease.

Both the tenant and PHA should have 60 days advance notice of any proposed changes to the lease so the PHA may screen leases and approve the tenancy. This is especially important for any new changes in security deposits, responsibility for utilities, and proposed rent changes that may be affected by the new lease.

If HUD no longer will require a new HAP contract for a revised lease, which in itself is a welcome reduction in work,

it should retain the PHA's authority to disapprove the continued tenancy if the revised lease violates any program requirements or State and local law. The PHA should review the terms of the new tenancy, determine whether a HAP contract should be executed for this tenancy, and review the terms and conditions of the lease.

HUD response. HUD has not revised the interim rule to require PHA approval of leases. Instead, the housing choice voucher program regulations provide that a participating owner must certify that the terms and conditions of the lease are consistent with State and local law. It will be a violation of the HAP contract if the owner certification of lease consistency with State and local law is deficient. PHAs are not required to review the lease to assure such consistency, although the rule provides in § 982.308(c) that the PHA may opt to review leases for State and local law compliance.

The PHA will only provide housing assistance for a tenancy approved by the PHA. If both parties agree to terminate the lease, the family is not considered to be moving in violation of the lease.

The final rule is revised (§ 982.308(g)) to specify that PHA approval of the tenancy, and execution of a new HAP contract, are required for the following changes in the lease: (1) Changes in tenant or owner responsibilities for utilities or appliances; (2) changes in the lease term; and (3) if the family moves to a new unit, even if the unit is in the same building or complex. PHA approval of the tenancy, and execution of a new HAP contract, are not required for other changes in the lease such as a change in family composition or a change in the amount of rent to owner.

Of course, lease changes are subject to the essential program requirements, as stated in the tenancy addendum. In addition, § 982.308(g) of the final rule specifies that 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. Any such changes are subject to rent reasonableness requirements that bar owner from charging more than the market rent for comparable unassisted units.

Section 982.309 Term of assisted tenancy

Comment: Lease term of less than one year. HUD appropriately allows PHAs ability to approve leases with initial terms of less than one year.

PHAs should have greater flexibility to approve lease term of less than one year.

Section 982.309(a) of the interim rule provides that a PHA may approve a lease term of less than one year if such a lease term is the prevailing local practice and the PHA determines that the shorter term will improve housing opportunities for the family. Some PHAs serve a number of communities, each with a prevailing local practice, thus making it difficult for the PHA to develop a consistent lease term policy. The final rule should provide PHAs with the latitude to allow a lease term of less than one year (whether or not it is the prevailing local practice in a particular community), as long as it appears to be the prevailing practice in the State.

Clients who reside in college communities have difficulty finding owners who are willing to sign a one-year lease. Provision for leases of less than one year will expand housing choice for these clients.

The final rule should provide that under no circumstances may a PHA allow for a lease term of less than 6 months; otherwise some PHAs may use month-to-month leases, which do not adequately protect tenants from arbitrary eviction.

A lease term of less than one year should only be granted if the landlord would reject the lease because of the one-year lease term.

Initial lease terms of less than one year seem inconsistent with the goal of family stabilization and allow a loophole for future rent increases. The term ''prevailing local market practice'' should be clarified.

Rule should make clear that approval of lease terms of less than one year must meet two tests: (1) The PHA determines that such shorter term would improve housing opportunities for the tenant; and (2) such shorter term is considered to be a prevailing local market practice. This should be a case-by-case determination.

HUD response. The statute authorizes PHA approval of initial lease terms of less than one year under certain circumstances. The conditions for approval of an initial lease term of less than one (1) year are statutory. HUD intends to permit PHAs to use local judgment to determine prevailing local practice with respect to lease terms.

The regulatory text in the interim rule (and carried forward to the final rule) is clear that approval of initial lease terms of less than one year must meet both statutory tests. PHAs may opt to determine case-by-case whether approval will improve an individual family's housing opportunities, or the PHA may make a determination based on its overall (not case-by-case) judgment of market opportunities. PHAs will determine what is prevailing local practice with respect to lease terms.

Comment: Automatic lease renewals. The final rule needs to include automatic renewal in the absence of the landlord or tenant affirmatively terminating the tenancy. The automatic renewal will protect a tenant from a landlord who decides at the last moment not to renew.

HUD response. The recommendation is inconsistent with the statutory provision, which requires use of the lease that the owner uses in the locality. Congress revised the lease provisions to minimize differences between voucher tenancies and unassisted tenancies to facilitate expanded owner participation in the Section 8 voucher program.

Comment: Mutual termination of the lease by the owner and tenant; termination of the lease by the tenant after notice. The mutual termination provision in former § 982.309(b)(3) should be retained to clarify, at a minimum, that owners and tenants are free to negotiate a mutual termination during the lease term.

Lease termination provisions should remain as in former § 982.309(d) which provided that, after the initial term of the lease, the family may terminate the lease at any time, and that the lease may not require the family to give more than 60 calendar days notice of such termination to the owner. It is desirable to not allow the family's right to terminate the lease, after the initial term, to be dependent upon the terms of the particular lease used. Families may be locked into long periods, which will restrict their mobility.

HUD response. The recommendations are inconsistent with the new statutory requirement to use the standard lease form that an owner uses for other tenancies in the locality. Congress revised the lease provisions to minimize differences between voucher tenancies and unassisted tenancies to facilitate expanded owner participation in the Section 8 voucher program.

Section 982.310 Owner termination of tenancy.

Comment: Owner lease termination notice. The law provides that any termination of a voucher tenancy by the owner ''shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action.'' Section 982.310(e)(1) contradicts this statutory requirement because it permits an owner to combine the notice of grounds with an initial pleading used to begin an eviction action.

The rule should specify how much notice the owner must give to end the lease without cause at the end of a lease term.

HUD response. Section 982.310(e) has been revised to specify that the tenancy does not terminate during the term of the lease before the owner has given notice to the tenant that specifies the grounds for termination. The regulations continue to require that the notice must be given at or before the beginning of any eviction action.

The termination notice must be in accordance with the lease and State and local law. HUD does not specify the length of notice periods required for eviction of the tenant.

Comment: Applicability of Part 247 to lease terminations. Paragraph (g) of this section needs to be removed. It was originally included to minimize the landlord's burden when Section 8 requirements and Part 247 requirements were roughly equivalent. Now the landlord is allowed to terminate the lease without good cause. Leaving this paragraph in the final rule would mean that Section 8 tenants in federally subsidized projects under part 247 would not be entitled to the same protections as other residents of the project.

HUD response. HUD disagrees with the commenter. The same tenancy requirements should apply to all voucher tenancies.

Comment: Lease termination for a lease with an initial term exceeding one year. Section 982.310(d)(2) needs to be revised because it requires, in the case of a lease with an initial term of two years, that the landlord cannot terminate the tenancy, except for tenant misfeasance or nonfeasance for a full two years. The opening clause for paragraph (d)(2) should read: ''During the shorter of the first year of the lease term or the initial lease term, the owner may not terminate the tenancy for 'other good cause' unless. * * *''

HUD response. The interim rule provision is not in error. The final rule continues to provide that an owner may opt to offer an initial lease term longer than one year. During the initial lease term, the owner can only terminate tenancy for cause. This is not a new requirement. Of course, the initial HAP contract term may not extend beyond the ACC expiration date for the funding source from which the HAP contact is to be funded.

Definition of ''serious lease violation''. HUD should define what constitutes a ''serious lease violation.'' This should be changed to serious or repeated violation, the standard required for evictions in the Section 8 programs.

Serious lease violations should not include late payments or ''minor violations''. The definition of ''serious lease violation'' should not include ''other amounts due under lease.'' Tenants should not be subject to eviction for failure to pay late charges or disputed damage charges when a good faith dispute exists over liability for charges.

The definition of serious lease violation should not include minor violations or repeated minor violations of the lease.

HUD response. The regulation is clear that a ''minor'' lease violation is not a ''serious'' lease violation. HUD has determined that it would be impossible to provide an exhaustive list of actions or inactions that are considered serious lease violations. The eviction determination is ultimately made on a case-by-case basis by judges in State or local landlord/tenant courts. The courts determine whether a lease violation has occurred, and whether the violation is sufficiently ''serious'' to justify eviction from the assisted unit.

Section 982.314 Move with continued tenant-based assistance.

Comment: Prohibition on family moves. Permitting a PHA to prohibit a family from moving during the first year of the assisted tenancy may result in the termination of a family's assistance without good cause. This may occur when the initial lease term is less than one year and the landlord refuses to renew the lease without good cause. The family would be prohibited from moving and, therefore, lose its assistance. HUD should revise § 982.314(c)(2) to authorize PHAs to prohibit any moves by a family during its initial lease term (instead of during its initial year of assisted occupancy); and to permit a family to move whenever the landlord refuses to renew the family's tenancy without good cause.

HUD response. Consistent with the commenter's recommendation, § 982.314(c)(2)(i) is revised to change the time frame from ''first year'' to ''initial lease term.''

Section 982.352 Eligible housing.

Comment: PHA-owned units. The rule should not require a PHA to obtain the services of an independent agency to determine rent reasonableness and conduct HQS inspections. PHAs should be trusted to offer a decent unit and reasonable rent to an otherwise eligible family. Generally accepted accounting practices permit a separation of duties and control within the same organization. The independent auditor should be required to conduct a random sampling of Section 8 files where the PHA is the owner. PHA rent reasonableness data and other periodic checks on leased units provide adequate protection for the government and the taxpayer.

HUD should permit high-performing PHAs to conduct their own inspections of PHA-owned units.

The final rule should clarify how HUD will approve an independent agency. Is it HUD's intention to permit a neighboring PHA to perform such services?

HUD response. The special requirements for independent inspections and contract rent negotiations and reviews for PHA-owned housing are statutory. These requirements reflect legitimate and substantial concern with the inherent conflict of interest when the PHA contract administrator—responsible for oversight of the Section 8 owner—is itself the Section 8 owner, or substantially controls the nominal ownership entity.

The HUD field office will review any independent agency arrangement to ensure that the independent agency has an arms-length relationship with the PHA. A neighboring PHA may act as an acceptable independent agency—so long as the neighboring PHA is authentically independent of the PHA unit owner. A unit of general local government such as the Community Development Agency may also be an acceptable independent agency, unless the PHA is itself part of the same unit of general local government or an agency of such government.

Comment: Administrative fees for PHA-owned units. The reasoning behind requiring PHAs to obtain the services of independent entity is sound, but PHAs should earn the full administrative fee for the unit.

HUD response. The statute provides for a lower administrative fee for PHA-owned units.

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

Comment: Portable moves during first 12 months. The rule should provide that the PHA's discretion regarding whether to allow portability in the first 12 month period from a non-resident family's admission to the program must be exercised program-wide, not family-by-family.

Rule should clarify that the PHA will provide reasonable accommodation to families during the 12-month initial period that might include waiver of its policy under § 982.353(c).

HUD response. The statute permits PHAs to prohibit portability during the first 12 months from admission for families who did not live in the PHA jurisdiction when they applied for assistance. This provision maintains the local character of a PHA's voucher program, and prevents families from shopping for assistance from different PHAs, regardless of where the family intends to live with assistance under the program. The decision to allow or deny portability during the first 12 months after family admission is appropriately left to PHA discretion—to exercise on a program-wide or case-by-case basis.

Although HUD has not made the recommended change concerning reasonable accommodation, PHAs must consider reasonable accommodation in the context of all program requirements and functions in accordance with the statute and HUD equal opportunity requirements. Equal opportunity requirements are specified in § 982.53.

Comment: Income eligibility of portable family. HUD should eliminate the requirement to determine income-eligibility of a porting family admitted (initially assisted) in the jurisdiction of a receiving PHA (§ 982.353(d)(3)). If the family is found eligible by the initial PHA, there is no reason to impose the burden of a second income-eligibility determination by the receiving PHA.

HUD response. The statute requires that an applicant be income eligible before initially receiving housing assistance. If the family will first receive assistance in the receiving PHA's jurisdiction, then the family must be income eligible in the receiving PHA's jurisdiction.

Section 982.355 Portability: Administration by receiving PHA.

Comment: Effect of preferences on portability. The final rule should explicitly provide that a receiving PHA may not use a local residency preference to deny portability.

HUD response. The rule is revised to clarify that when the family has a right to lease a unit in the receiving PHA jurisdiction under portability procedures, the receiving PHA must provide assistance for the family (§ 982.355(c)(10)). Receiving PHA selection preferences (including any residency preferences) do not apply, and the receiving PHA waiting list is not used. However, the receiving PHA may deny or terminate assistance for family action or inaction in accordance with §§ 982.552 and 982.553.

Comment: Portability to areas serviced by other PHAs. Section 982.353(b) imposes restrictions on portability by requiring that the area to which the family wants to move must have a PHA administering a Section 8 Housing Choice Voucher Program. In many instances this will not allow families to leave urban areas for suburban areas or rural areas.

HUD response. The statute provides for portability to any area in the United States that is in the jurisdiction of a PHA administering a tenant-based Section 8 program. In practice, in most communities there is a PHA that operates a Section 8 program. Often, multi-jurisdictional PHAs (such as state agencies) administer the certificate and voucher programs in areas where there are no local PHAs.

Section 982.405 PHA initial and periodic unit inspection.

Comment: HQS procedural guidelines and performance standards. HUD needs to provide additional guidance regarding the procedural guidelines and performance standards that must conform to practice utilized in the private housing market.

If the Secretary exercises discretion to issue procedural guidelines and performance standards, they must be published for notice and comment.

The rule cannot directly delegate a secretarial duty to a PHA, and HUD guidelines and standards need to be published in an accessible format with no hidden criteria.

HUD response. Section 982.405(f) of the interim rule which required the PHA to adopt procedural guidelines and performance standards for conducting required HQS inspections has been deleted. HUD has determined that the pre-merger HQS inspection requirements and the SEMAP HQS-related performance standards meet the section 8(o)(8)(E) statutory requirement for the Secretary to establish inspection guidelines and performance standards.

Section 982.451 Housing assistance payments contract.

Comment: PHA penalties for late housing assistance payments to owners. The rule should exempt new or revised HAP contracts from penalties for late payment of housing assistance to owners. The paperwork and other administrative work involved in preparing a new or revised HAP contract may make it difficult for a PHA (and in particular a large PHA) to avoid a late payment. Recurring late payments should be penalized.

The rule should clarify whether a owner that normally does not charge a late fee to tenants can still charge a late fee to the PHA. If the owner can charge late fees to the PHA, does the PHA have the right to determine the maximum amount of liability it will assume? Further clarification is needed on whether late fees will be determined based on date the payment is mailed.

HUD response. The interim rule provided that the PHA may be assessed a late rental payment penalty only if it is in accordance with generally accepted practices and law in the local housing market. The interim rule also stated that a PHA is not obligated to pay any late payment penalty if HUD determines that the late payment is attributable to factors beyond the PHA's control. Section 982.451 of the final rule has been revised to add two more conditions for owner assessment of a late fee to the PHA: it must be the owner's practice to charge such penalties for assisted and unassisted tenants, and the owner must charge such penalties against the tenant for late payment of family rent to owner.

The interim rule specified that the PHA may add to the HAP contract a provision which defines when the housing assistance payment by the PHA is deemed received by the owner. There is nothing that would prohibit a PHA from defining ''receipt of the housing assistance payment by the owner'' as the date the PHA mailed the funds to the owner or the date of actual receipt by the owner.

Comment: Funding for PHA penalties for late housing assistance payments to owners. It is unfair to penalize PHAs for late payments unless HUD headquarters is willing to pay for the late payments.

HUD response. The statute provides for payment of penalties for late payments of housing assistance under certain circumstances. The statute further provides that a late payment fee may only be paid from the PHA's administrative fee income, including any amounts in the PHA administrative fee reserve. The PHA is not obligated to pay any late fee if HUD determines that the late payment is due to factors beyond the control of the PHA.

Section 982.453 Owner breach of contract.

Comment: Owner breach of HAP contract for ''drug-related criminal activity''. The change to § 982.453(a)(5) to make ''drug-related criminal activity'' (instead of only ''drug trafficking'') an owner breach of contract was a good one. Why did the change not also include violent criminal activity as a contract breach?

HUD response. Section 982.453(a) was revised to add commission of any violent criminal activity by the owner as a breach of the HAP contract.

Section 982.502 Conversion to voucher program.

Comment: Deadline for conversion to the merged program after the merger date. Conversion from pre-merger assistance should be expedited. Conversion should be effective upon the next regular reexamination on or after the merger date. The final rule should provide that a landlord and tenant may jointly (not individually) convert their regular certificate tenancy to a voucher tenancy at any time after the merger date. Reducing the number of certificate conversions during the second year after the merger date will reduce PHA administrative burdens that may delay one or more assistance payments to a family.

Conversion from pre-merger assistance should be delayed. Requiring that conversion take place at the second regular reexamination is too restrictive. HUD should permit an extension in situations where the tenant and owner cannot agree to convert.

PHAs should be permitted to delay the transition of certificate families leased units with exception rents as a reasonable accommodation until the family leaves the Section 8 program or moves to another unit.

HUD response. The interim rule provided for the complete conversion of all pre-merger tenant-based assistance to the merged program no later than the effective date of the second regular reexamination on or after the merger date (October 1, 1999). HUD considers this time frame reasonable and has not adopted the recommendations to shorten or lengthen the time. It is noted, however, if both a participant and the owner want to convert to the merged program sooner than required, they may do so by executing a new lease and HAP contract. In addition, the technical correction to the interim rule published on September 14, 1999, addresses approval of higher payment standards and approval of exception payment standards as a reasonable accommodation for a tenant with disabilities.

Comment: Continuing current benefits after conversion. HUD should not terminate program assistance upon conversion. HUD should allow ''grandfathering'' of pre-existing benefits. Terminating program assistance will create undue hardship on the family and create an impact on PHA staff.

HUD response. The conversion time frame is reasonable and the rule provides for a uniform delay in increases in the family share of rent that may result from implementation of the housing choice voucher program.

Comment: Delayed reductions in subsidy for over-FMR tenancies based on payment standard revisions. To protect families with over-FMR tenancies, the final rule could simply require that over-FMR tenancies be treated no differently than other certificate tenancies. Alternately the final rule could require that the subsidy for over-FMR tenancies be calculated based on the higher of the FMR or payment standard for the transition period before the second annual reexamination after October 1, 1999.

HUD response. The regulation has been revised to require that any reduction in subsidy attributable to the decrease in the payment standard will be delayed until the effective date of the family's second regular reexamination on or after the payment standard decrease. This is a change in practice for the voucher program. Before this final rule, a voucher participant's subsidy was based on the higher of the current payment standard or the payment standard in effect when the participant initially leased a specific unit under the voucher program.

Comment: New certificate HAP contracts after the merger date. The final rule should permit execution of a new certificate HAP contract until the family's second annual reexamination after August 12, 1999 under certain circumstances.

HUD response. HUD has not made the recommended change to permit execution of new certificate program HAP contracts after the October 1, 1999 merger date. The requirement that only voucher HAP contracts may be executed on or after October 1, 1999, will facilitate conversion to the housing choice voucher program.

Comment: Timing of HQS inspections and income reexaminations during conversion period. HUD should clarify whether the regularly scheduled annual HQS inspection and the family income determination for a continually assisted tenant will suffice for the purpose of the conversion. Unless the property is due for an annual HQS inspection, the PHA should not be required to conduct an HQS inspection upon conversion.

HUD response. The regularly scheduled annual HQS inspection and family income reexamination will suffice for purposes of the conversion to the merged program. A new HQS inspection or income reexamination is not automatically triggered because a certificate program unit is being converted to the merged program and a voucher HAP contract will be executed. A new HQS inspection and a new income reexamination for the family is not required until 12 months lapse from the date of the last HQS inspection and income reexamination under the certificate program.

Comment: Currency of income verifications during conversion period. HUD should clarify whether the period of time for which verifications are valid may be extended for more than 120 days to allow the PHA to determine income and the family share well in advance (more than 120 days) of the conversion date. At the mandatory 120 day notification period, the PHA will not have income verifications for the current year, and the PHA should probably be collecting such information with the 120 day notice.

HUD response. HUD recognizes that the PHA may not be able to meet the normal time frames for the currency of the family's income verification data during the transition period to the housing choice voucher program. Chapter 10 of Handbook 7420.7, PHA Administrative Practices Handbook, provides guidance (not requirements) with respect to income reexaminations. That handbook states that income verification data should not be older than 120 days. It is acceptable to HUD if the income verification data is older than the 120 day norm in order to facilitate the conversion to the housing choice voucher program and to provide needed information to participant families.

Comment: Reporting of conversions on Form HUD–50058. HUD should confirm that the correct update type to be used is ''reexamination'' for all Form HUD–50058 reporting of conversions of certificate to voucher tenancies.

HUD response. Termination of the certificate HAP contract and execution of a voucher HAP contract does not constitute an admission. The family is a current participant in the tenant-based Section 8 program and, therefore, ''reexamination'' is the correct term to describe the process of updating the information concerning the family's income and composition.

Comment: Grandfathering of pre-merger units rented from relatives. The final rule should clarify how current tenancies involving a landlord who is leasing to a relative are to be treated when the current certificate assistance is converted to a voucher HAP contract.

HUD response. Section 982.306(d) was revised to clarify that the prohibition on renting a unit from a relative does not apply for continued assistance in the same unit. Therefore, the prohibition on renting a unit from a relative is not triggered by the conversion to the housing choice

voucher program if the Section 8 participant does not move from the unit assisted under the certificate program.

Comment: Owner damage claims during the conversion period. HUD should clarify that all legitimate damage claims can be processed for payment at the conversion of the family's assistance regardless of whether the family moves or remains in place.

HUD response. PHA reimbursement for damage claims was eliminated beginning on October 2, 1995. However, HAP contracts executed before that date permit owners to submit a damage claim to the PHA if the family moves in violation of the lease. If a participant remains in the same unit after conversion to the housing choice voucher program, there is no ''move in violation of the lease'' to trigger eligibility for a damage claim (for a unit under a HAP contract executed before October 2, 1995). If a certificate participant moves to another unit as a result of the conversion to the voucher program (e.g., the owner does not wish to participate in the voucher program), the PHA may process any damage claim.

Comment: Renewal of certificate tenancies during the conversion period. Section 982.502(d) should emphasize conversion of certificate assistance, not termination of assistance. The regulation should refer to the renewal of the certificate tenancies under the voucher program.

HUD response. HUD has not made the recommended change to § 982.502(d).

The conversion process from the certificate program to the voucher program cannot be characterized as a ''renewal.'' Any remaining certificate HAP contracts must be terminated on the effective date of the family's second regular reexamination after the October 1, 1999 merger date. Termination of the certificate HAP contract and the certificate program tenancy and lease permits the PHA to execute a new HAP contract under the housing choice voucher program on behalf of the family.

Comment: Unit rent increases after conversion. Clarification is requested regarding whether owners will be able to raise rents they were receiving under the regular certificate program to market level (reasonable rent) at the time of conversion to a voucher tenancy. The result may be in excess of the voucher payment standard and require tenants to move.

HUD response. Yes, if an owner were charging an artificially low rent under the certificate program, it is possible that the owner would be able to raise the rent after the certificate program HAP contract is canceled. The PHA must ensure that any increases in the rent to owner meet the program's rent reasonableness requirements.

Comment: Rent burden caps during the conversion period. Clarification is requested concerning whether there are any restrictions on how great the family share can be if the family remains in the same unit. Many families will prefer to remain in place even though their family share will increase.

HUD response. The initial rent burden cap does not apply to participants who remain in the same unit.

Section 982.503 Voucher tenancy: payment standard amount and schedule.

Comment: Payment standards. The final rule should include guidance on the legal standards applicable to PHA determination of the payment standard schedule. Further, HUD should clarify a PHA's discretion to vary the payment standard by unit size within designated parts of an FMR area, and the final rule should specify requirements for HUD approval of a payment standard below 90 percent of FMR. If justified by rent burden and other data, HUD should be able to require a PHA to use a payment standard above 110 percent of FMR.

PHAs should not be permitted to lower payment standards for existing certificate holders who will be converted, nor for current voucher holders, without prior HUD approval.

HUD response. HUD will provide further guidance on implementation of the Housing Choice Voucher Program, including PHA establishment of the payment standard. The statute provides that PHAs may set the payment standard anywhere between 90 and 110 percent of the FMR. The statute does not authorize HUD to require a PHA to use a payment standard above 110 percent of FMR. The PHA may not set a lower standard applicable only to prior certificate program participants. One payment standard schedule will apply to participants in the pre-merger certificate and voucher programs.

PHAs may opt to set different payment standards by unit size within the 90 to 110 percent FMR range. PHAs may opt to set different payment standards within the 90 to 110 percent of FMR range for different market areas of the PHA jurisdiction (*e.g.*, a low poverty neighborhood). If more than one PHA operates in a jurisdiction, each PHA has discretion in deciding whether the PHA will use a uniform (or a different) payment standard within the 90 to 110 percent of FMR range for each unit size and geographic area.

A new paragraph (d) was added to § 982.503 to specify that HUD will not approve a payment standard below 90 percent of FMR if the family share for more than 40% of the current participants for the applicable unit sizes exceeds TTP. Such funding may be based on the most recent income examinations.

Comment: Exception payment standards: HUD approval requirements. The final rule should not limit the total population of an exception area (*i.e.*, an area where HUD has approved a payment standard higher than the applicable FMR) to 50% of the population of the FMR area. In FMR areas containing a large city, the granting of an exception rent for the city may preclude other portions of the FMR area from obtaining an exception rent. HUD should provide all PHAs with equal opportunity to represent their case for an exception rent.

HUD should make clear that every PHA that administers a voucher program within an area for which HUD has approved an exception payment standard must use the approved exception standard.

HUD should (1) permit PHAs seeking an exception payment standard above 120 percent of FMR to use the ''median rent method'' justification, (2) permit PHAs to use a recent HUD/RDD survey to justify an exception payment standard, and (3) in particularly tight markets, permit PHAs to justify a payment standard exception by a method that is not based on rent data.

The rent for most decent, safe, and sanitary units in certain areas is often greater than 10 percent more than the FMR. This may result in tenants with more expensive special housing needs (such as persons with disabilities) paying greater than 40 percent of their incomes in rent.

PHAs need increased flexibility in establishing exception rents based on local housing needs and demands.

HUD response. The FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing of a modest nature. FMRs are set at the 40th percentile rent—the dollar amount below which 40 percent of standard quality rental housing units rent in the FMR geographic area. Consistent with the statute, the regulation provides for HUD approval of PHA requests for payment standards higher than 110 percent of the FMR.

The rationale for limiting exception payment standards to 50 percent of the population in the FMR area is that to do otherwise would result in approvals of exceptions being the norm, not an exception. If an exception payment standard is necessary for more than 50

percent of the population in an FMR area, then the FMR is inappropriate and should be revised. It is noted that the merger regulation permits additional flexibility in this area than did the previous regulations for the certificate and voucher program. The previous regulations for the certificate and voucher program restricted the number of exceptions over 100 percent of FMR, while the merger regulations restrict the number of exceptions over 110 percent of FMR.

Section 982.503(b)(3) provides that exception rents above 120 percent of the FMR will only be approved for the total area of a county, PHA jurisdiction, or a U.S. census ''place'' (*e.g.*, city, borough, town, or village). Accordingly, the ''median rent method'' which provides census tract data is not appropriate justification for an exception rent applicable to areas larger than census tracts. Likewise, the random digit dialing survey which provides MSA wide data is not appropriate for an exception rent applicable to an area smaller than a MSA.

If more than one PHA operates in a jurisdiction, each PHA has discretion in deciding whether they will use a uniform (or a different) exception payment standard for each unit size and geographic area. The final rule has not modified the interim rule requirement in Section 982.503 that any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount.

Comment: Exception payment standards: Persons with disabilities. PHAs should be required to use 120% of FMR as the payment standard for persons with disabilities who have already been granted an individual exception rent. HUD also should require PHAs to use up to 120 percent FMR as the payment standard when needed as a reasonable accommodation for a tenant with disabilities.

The rule needs to permit PHAs to approve exceptions to the established payment standard to provide for reasonable accommodations for persons with disabilities.

HUD should inform PHAs to consider the high rental costs of providing accessible units for people with disabilities. HUD should issue guidance on exception rents and have an expedited and simple process to grant such exceptions.

HUD response. The technical correction to the interim rule published on September 14, 1999 authorizes approval of exception payment standards as a reasonable accommodation for a tenant with disabilities. Section 982.503 was corrected to specify that a PHA may establish a higher payment standard between 90 percent and 110 percent of the FMR when required as a reasonable accommodation for a family that includes a person with disabilities. In addition, HUD field offices may approve a payment standard over 110 percent and up to 120 percent of the FMR for this purpose.

Comment: Exception payment standards: equal opportunity concerns. Section 982.503(c)(4) describes the condition that will permit HUD to approve an exception rent. Among other factors, HUD will consider the ability of families to find housing outside areas of high poverty. The final rule should explicitly provide that PHAs have an obligation to affirmatively further fair housing.

The rule fails to make clear that the payment standard must comply with the fair housing and civil rights laws, affirmatively further fair housing, and be consistent with the applicable Consolidated Plan. The rule should require PHAs to articulate the fair housing considerations that went into setting the payment standard.

HUD response. The statute specifically delegates to the PHA the establishment of a payment standard between 90 to 110 percent of the FMR. The PHA rationale for establishing the payment standard is addressed in the PHA plan.

HUD has retained the previous regulatory requirement that mandatory justifications for approval of an exception payment standard include that the higher amount is needed either (1) to help families find housing outside of areas of high poverty, or (2) because families have trouble finding housing for lease within the term of the voucher.

Administration of all aspects of the merged program is subject to civil rights laws and fair housing laws. Equal opportunity requirements (including affirmatively furthering fair housing requirements) are specified in § 982.53.

Comment: HUD review of PHA payment standard schedules. The final rule should provide that HUD will initially monitor rent burdens of PHAs utilizing payment standards at 90 percent of FMR and that a review of payment standards should be triggered by a voucher failure rate above 30 percent.

The final rule should specify that the scope of HUD's payment standard review includes mobility (*i.e.*, the ability of families to find housing outside of high poverty areas) and fair housing choice (*i.e.*, the ability of families to find housing outside areas of minority concentration).

The trigger for HUD review of the adequacy of the payment standard should be when 30 (not 40) percent of the participants have high rent burdens.

HUD response. The statute provides that HUD shall monitor rent burdens and review any payment standard that results in a significant percentage of the families occupying units of any size paying more than 30 percent of adjusted income for rent. HUD intends to monitor rent burdens on a case-by-case basis, PHA-by-PHA, in consideration of the unique circumstances of different housing markets and PHA administrative policies. As required by the statute, HUD's review of the payment standard will be based on the rent burden of participants, not the success rates of applicants.

HUD has not revised the regulatory standard specified in the interim rule for HUD review of the adequacy of the PHA payment standard. However, HUD will reexamine the appropriateness of the trigger for a HUD payment standard review after there is experience with implementation of the housing choice voucher program.

Section 982.504 Voucher tenancy: Payment standard for family in restructured subsidized multifamily project.

Comment: Future funding for restructured subsidized projects. Funding for families converted from project-based assistance must be at an adequate level in the future, using the same comparability method as is used when the initial tenant-based contract is calculated.

HUD response. HUD's policies for providing renewal funding for expiring ACCs have been developed pursuant to negotiated rulemaking. Actual costs are a factor in providing renewal funding.

Comment: Payment standard for restructured subsidized projects. This regulatory section is more appropriately part of HUD's regulations in 24 CFR part 401. This section lacks clarity and consistency with the rules on HUD's Mark-to-Market program.

HUD response. The regulatory provision is consistent with HUD's mark-to-market program. The regulations for the mark-to-market program specifically provide that the amount of the voucher program rental assistance will be as provided for in the voucher regulation.

Section 982.508 Rent to owner: maximum rent at initial occupancy.

Comment: Initial rent burden cap. The 40 percent maximum initial rent burden requirement contradicts the intent of the Section 8 voucher program,

which was designed to give families the freedom to find housing outside of low income areas and to move closer to employment or educational opportunities. It is not unusual for families to choose to pay more than 40% of income in order to obtain good housing in non-impacted areas. As an example, seniors often spend a higher percentage of their income on housing in order to ensure their safety and security.

The 40 percent maximum rent burden requirement might adversely impact certain families, such as large families, seniors and persons with disabilities requiring special amenities or services.

In high-rent areas, such as New York, the 40 percent maximum rent burden is unrealistic and will make it more difficult for families to find safe and sanitary housing. A family may actually be prevented from reducing its rent burden (for example from 55% of income to 45% of income).

The 40 percent rent burden limit should apply throughout the life of the tenancy.

HUD response. The maximum initial rent burden requirement is statutory and cannot be waived by HUD. The 40 percent maximum rent burden requirement applies when an applicant receives Section 8 tenant-based voucher assistance for the first time on or after October 1, 1999, and every time a participant (in the certificate or voucher program) moves to different unit on or after October 1, 1999.

After admission, the 40 percent maximum initial rent burden cap does not apply to future changes of tenant income or changes in the rent to owner amount if the participant stays in the same tenant-based assistance unit. Further, the 40 percent initial rent burden cap does not apply to families who will participate in the Section 8 tenant-based homeownership program (for which a proposed rule was published on April 30, 1999, 64 FR 23488) since homeownership families do not pay rent, or any of the project-based Section 8 programs.

Comment: Effect of the minimum rent on the initial rent burden cap. The part 5 regulation permits a PHA to set a minimum rent of up to $50. The merger rule requires an initial rent burden cap of 40 percent of the family's monthly adjusted income. These two regulations clash for families who have very little or no income at the time of admission (or at the time of a move while they are participants).

HUD response. It is true that the initial 40 percent rent burden cap will limit admission of any family whose total tenant payment is based on a calculation other than 30 percent of adjusted income. For example, elderly and disabled families with large medical expenses, families with little or no income, welfare families in ''as paid'' States, and families with undocumented alien family members most likely will not be eligible to participate in the program because of this 40 percent rent burden cap. HUD is seeking a technical correction to the 40 percent rent burden legislative requirement to exempt families whose total tenant payment is based on a minimum rent, welfare rent or 10 percent of gross income. In the meantime, a PHA should allow such families that cannot find housing below the 40 percent rent burden cap to retain their current position on the waiting list, in anticipation of the requested legislation being enacted into law.

Section 982.509 Rent to owner in subsidized projects

Comment: Rent to owner in subsidized projects. The rule should retain the provisions of former § 982.512. This section has been removed and should be retained.

HUD response. The basic content of former § 982.512 is now found in § 982.521, but with respect to certificates only.

Section 982.521 Regular tenancy: Rent to owner in a subsidized project.

Comment: HOME program rents. The HOME rent provisions should apply equally to the certificate and the housing choice voucher program. The previous clarifications with regard to rents in the HOME program have been lost in this new rule.

HUD response. The HOME program regulations specify how rents are determined for HOME program units. Section 8 requirements do not over-ride the HOME rental limitations. It is not necessary to repeat HOME rental requirements in the Section 8 rule.

Section 982.552 PHA denial or termination of assistance for family.

Comment: Mandatory termination of assistance for a tenant-based program participant evicted for serious lease violations. A lease violation should not be grounds for terminating assistance to a family. There may be certain circumstances that merit leniency; for example, if an abusive spouse abandons the family resulting in the family's eviction for nonpayment of rent. The automatic termination provision unfairly favors landlords, because it effectively deprives tenants from the opportunity to contest a landlord's allegation of a serious lease violation.

Termination of assistance due to lease violations should remain a discretionary ground for termination. This discretion is necessary to avoid unjust and inappropriate terminations.

HUD response. HUD has determined that the mandatory nature of this provision is necessary in order to foster responsibility in the Section 8 program. Section 8 assistance is a scarce benefit. This provision indicates that HUD will not reward serious lease violations, such as behavior that threatens other residents or the safety or maintenance of the premises, by providing continued Section 8 assistance in a different unit. Furthermore, this policy will address the complaint that some assisted families have kept their Section 8 benefits even after they have caused extensive damage or incurred a large unpaid rent debt. Additional efforts to hold families accountable for actions by family members should increase owner participation and provide expanded housing opportunities for low income families in nontraditional neighborhoods. It is noted that termination of assistance is only required for an eviction resulting from a serious lease violation (not repeated lease violations). Therefore, the family will be protected by the due process they receive through the judicial eviction process and, additionally, the PHA must give the family the opportunity for an informal hearing before assistance termination.

Comment: Mandatory denial of admission if applicant is evicted from federally assisted housing for serious lease violations. The provision in § 982.552(b) specifying denial of admission if the applicant is evicted from federally assisted housing for serious lease violations should be stated as a requirement and not a discretionary matter.

HUD response. Section 982.552.(b)(1) is reserved and a new paragraph (c)(1)(ii) is added to permit PHAs to deny admission or terminate assistance if any member of the family has been evicted from Federally assisted housing in the last five years. This is a change from the interim rule, which prohibited admissions of families evicted from Federally assisted housing for serious lease violations. HUD may review this matter again as it finalizes the pending ''One Strike'' regulation.

Comment: Termination of assistance if participant fails to meet welfare-to-work program obligations. HUD should remove § 982.552(c)(1)(x), which authorizes PHAs to terminate section 8 assistance if the family fails to fulfill its obligations under the section 8 welfare-to-work voucher program. If HUD

decides to keep the provision, HUD should, at a minimum, modify the rule to require a much higher threshold of improper behavior on the part of the family before the family puts its housing assistance in jeopardy.

HUD response. The rule is revised to add requirements to the PHA briefing of the family participating in the welfare-to-work voucher program, and to the material provided in the family's information packet (§ 982.301(a) and (b)). Specifically, the PHA must advise (both verbally and in writing) the family of the local welfare-to-work voucher program family obligations and that failure to meet these obligations is grounds for PHA denial of admission or termination of assistance.

HUD is not mandating federal standards for family obligations under the welfare-to-work voucher program, since there is local flexibility in designing such obligations. The option for PHA termination of assistance or denial of admission will permit PHAs to prevent program abuse by families that willfully and persistently violate work-related obligations under the welfare-to-work voucher program. Of course, the PHA must give the family the opportunity for an informal review or informal hearing before the PHA denies admission or terminates assistance.

Comment: HUD authority to regulate terminations of assistance. HUD has exceeded Congressional authorization in mandating certain required grounds for termination. Any required grounds for termination should be limited to those which are mandated by Congress.

HUD response. HUD has authority to define grounds for termination of assistance and has done so in a comprehensive manner since 1984.

Section 982.623 Manufactured home space rental: Housing assistance payment, Section 888.111 Fair market rents for existing housing: Applicability, and Section 888.113 Fair market rents for existing housing: Methodology.

Comment: Housing assistance payment calculation and FMR for manufactured home space rentals. HUD should clarify that tenant-paid utilities referenced in the regulations are directly related to the space (such as water or sewer charges) and not utilities related to the unit such as electricity or fuel.

HUD response. The part 982 regulation refers to the utility allowance for tenant-paid utilities. The PHA utility allowance for manufactured home space rentals is not limited to the tenant-paid utilities directly related to the space rental, such as water and sewer expenses. Instead, the utility allowance covers all tenant-paid utilities including electricity and gas for the manufactured home.

Section 888.111 is revised primarily to delete references to the certificate program and update the applicability language. Since the maximum subsidy now includes utilities for the manufactured home and the 1998 Act revised the subsidy formula, § 888.113(e) is revised to increase the FMR for a manufactured home space rental from 30 percent to 40 percent of the FMR for a two-bedroom unit.

Miscellaneous Comments

Comment: Applicability of rule to the Shelter Plus Care and Housing Opportunities for People with AIDS (HOPWA) programs. Clarification is requested concerning whether the requirements of new Housing Choice Voucher Program applicable to the tenant-based components of the Shelter Plus Care and HOPWA regulations.

HUD response. Although the regulations for the tenant-based components of the Shelter Plus Care and HOPWA Programs are similar to the Section 8 tenant-based regulations, a change to part 982 will not automatically revise the Shelter Plus Care or HOPWA regulations unless the part 982 regulations are incorporated by reference.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and have been assigned OMB Control Number 2577–0226. 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 was made on the May 14, 1999 interim rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Unfunded Mandates Reform Act

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

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this final 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 made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The final rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under Section 8 of the United States Housing Act of 1937. Specifically, the final rule would establish requirements governing tenant-based assistance for an eligible family. The final regulatory amendments would not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. No programmatic or policy change under this rule will affect the relationship between the Federal government and State and local governments.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the programs affected by this final rule are 14.146, 14.147, 14.850, 14.851, 14.852, 14.855, 14.857, and 15.141.

List of Subjects

24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 982

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

For the reasons discussed in the preamble, HUD adopts the amendments made to 24 CFR parts 248, 791, and 792 in the interim rule published on May 14, 1999 at 64 FR 26632 without change, and HUD amends 24 CFR parts 888 and 982 as follows:

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

1. Revise the authority citation for part 888 to read as follows:

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

2. Revise § 888.111 to read as follows:

§ 888.111 Fair market rents for existing housing: Applicability.

(a) The fair market rents (FMRs) for existing housing are determined by HUD and are used in the Section 8 Housing Choice Voucher Program (''voucher program'') (part 982 of this title), Section 8 project-based assistance programs and other programs requiring their use. In the voucher program, the FMRs are used to determine payment standard schedules. In the Section 8 project-based assistance programs, the FMRs are used to determine the maximum initial rent (at the beginning of the term of a housing assistance payments contract).

(b) Fair market rent means the rent, including the cost of utilities (except telephone), as established by HUD, pursuant to this subpart, for units of varying sizes (by number of bedrooms), that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

3. In § 888.113, revise paragraph (e) to read as follows:

§ 888.113 Fair market rents for existing housing: Methodology.

* * * * *

(e) *Manufactured home space rental.* The FMR for a manufactured home space rental (for the voucher program under part 982 of this title) is:

(1) 40 percent of the FMR for a two bedroom unit, or

(2) When approved by HUD on the basis of survey data submitted in public comments, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home spaces FMRs for areas where space rentals are thought to differ from 40 percent of the FMR for a two-bedroom unit. To be considered for approval, the comments must contain statistically valid survey data that show the 40th percentile manufactured home space rent (including the cost of utilities for the manufactured home) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the FMRs.

4. Amend § 982.4 as follows:

a. In paragraph (b), add, in alphabetical order, definitions of the terms ''family rent to owner'', ''utility reimbursement'', and ''welfare-to-work (WTW) families'';

b. In paragraph (b), in the definition of ''public housing agency'' remove from the end of paragraph (1) of this definition the word ''or'' and add in its place the word ''and'', and remove from paragraph (2)(i) of this definition the word ''consortia'' and add in its place the word ''consortium''; and

c. Revise paragraph (a)(4) of § 982.4 to read as follows:

§ 982.4 Definitions.

(a) * * *

(4) *Definitions concerning family income and rent.* The terms ''adjusted income,'' ''annual income,'' ''extremely low income family,'' ''tenant rent,'' ''total tenant payment,'' ''utility allowance,'' and ''utility reimbursement'' 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, apply to the certificate program, but do not apply to the tenant-based voucher program under part 982.

(b) * * *

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).

* * * * *

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner. (See § 982.514(b)). (For the certificate program, ''utility reimbursement'' is defined in part 5, subpart F of this title.)

* * * * *

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).

5. Amend § 982.53 as follows:

a. Revise paragraph (c) as set forth below;

b. Amend paragraph (d) by revising the reference to ''State law'' in the title to read ''State and local law''; and by revising both references to ''State laws'' in the rule text to read ''State and local laws''.

§ 982.53 Equal opportunity requirements.

* * * * *

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

* * * * *

6. In § 982.54, revise paragraph (b) to read as follows:

§ 982.54 Administrative plan.

* * * * *

(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.

* * * * *

7. Amend § 982.201 as follows:

a. Revise the section heading and paragraph (b)(2)(i) as set forth below;

b. Redesignate paragraphs (b)(2)(ii) through (iv) as paragraphs (b)(2)(iv) through (vi) respectively.

c. Add new paragraphs (b)(2)(ii) and (iii) as set forth below.

d. Revise the first sentence of paragraph (b)(2)(vi), as redesignated, to read as set forth below:

e. Add new paragraph (b)(2)(vii) as set forth below.

f. Revise the last sentence of paragraph (b)(4) to read as set forth below:

§ 982.201 Eligibility and targeting.

* * * * *

(b) * * *

(2) * * *

(i) Not less than 75 percent of the families admitted to a PHA's tenant-

based voucher 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.

* * * * *

(vi) If the jurisdictions of two or more PHAs that administer the tenant-based voucher 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. * * *

(vii) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the voucher program on or after the merger date, 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 voucher program from the point of admission).

* * * * *

(4) * * * At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.

* * * * *

8. Amend § 982.207 as follows:

a. Add paragraph (a)(4) to read as set forth below;

b. Revise paragraphs (b) and (d) to read as set forth below:

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

(a) * * *

(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.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence.

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

* * * * *

(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.

* * * * *

9. In § 982.301, add new paragraph (a)(5) and revise paragraph (b)(14) to read as follows:

§ 982.301 Information when family is selected.

(a) * * *

(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) * * *

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

* * * * *

10. In § 982.303, revise paragraph (b) to read as follows:

§ 982.303 Term of 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.

* * * * *

11. Amend § 982.305 as follows:

a. In paragraph (a)(3), remove the word ''and''.

b. In paragraph (a)(4), remove the period at the end and insert in its place ''; and''.

c. Add new paragraph (a)(5) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

(a) * * *

(5) At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, the family share does not exceed 40 percent of the family's monthly adjusted income.

* * * * *

12. In § 982.306, revise the section heading, amend the introductory paragraph (c)(5) to add the words ''engaged in'' after the words ''for activity'' and amend paragraph (d) to add a new final sentence to that paragraph to read as follows:

§ 982.306 PHA disapproval of owner.

* * * * *

(d) * * * 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.

* * * * *

13. In § 982.308, revise paragraphs (a), (b), (d), and (f), and add new paragraph (g), to read as follows:

§ 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.

* * * * *

(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.

* * * * *

(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).

14. In § 982.310, paragraph (e)(1)(i) is revised to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(e) * * *

(1) * * *

(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.

* * * * *

15. In § 982.314, paragraph (c)(2)(i) is revised to read as follows:

§ 982.314 Move with continued tenant-based assistance.

* * * * *

(c) * * *

(2) * * *

(i) Policies that prohibit any move by the family during the initial lease term; and * * * * *

16. Amend § 982.355 as follows:

a. Revise the section heading;

b. In paragraph (c)(9), remove the phrase ''with § 982.552'', insert in its place the phrase ''with §§ 982.552 and § 982.553''; and

c. Add new paragraph (c)(10), to read as follows:

§ 982.355 Portability: Administration by receiving PHA.

* * * * *

(c) * * *

(10) When the family has a right to lease a unit in the receiving PHA jurisdiction under portability procedures in accordance with § 982.353(b), the receiving PHA must provide assistance for the family. Receiving PHA procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA waiting list is not used. However, the receiving PHA may deny or terminate assistance for family action or inaction in accordance with §§ 982.552 and 982.553.

* * * * *

§ 982.405 [Amended]

17. Amend § 982.405 by removing paragraph (f).

18. In § 982. 451, revise paragraph (b)(5)(ii) to read as follows:

§ 982.451 Housing assistance payments contract.

* * * * *

(b) * * *

(5) * * *

(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).

* * * * *

19. Amend § 982.453, by adding new paragraph (a)(6) to read as follows:

§ 982.453 Owner breach of contract.

(a) * * *

(6) If the owner has committed any violent criminal activity.

* * * * *

20. Amend § 982.502 by revising the last sentence of paragraph

(c) and adding paragraphs (c)(1) and (2) to read as follows:

§ 982.502 Conversion to voucher program.

* * * * *

(c) * * * However, before the effective date of the second regular reexamination of family income and composition on or after the merger date, the payment standard for the family shall be the higher of:

(1) The initial payment standard for the family at the beginning of the HAP contract term; or

(2) The payment standard for the family as calculated in accordance with § 982.505, except that § 982.505(b)(2) shall not be applicable.

* * * * *

21. Amend § 982.503 by revising paragraph (d) and adding a new paragraph (e) to read as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(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 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.

22. Amend § 982.505 as follows:

a. Amend paragraph (b)(1) by removing the phrase ''payment standard'' and inserting instead the phrase ''payment standard for the family'';

b. Revise paragraph (c)(1) introductory text;

c. Amend paragraph (c)(3) by inserting ''first 24 months of the'' after the words ''During the'';

d. Redesignate paragraph (c)(4) as paragraph (c)(5); and

e. Add new paragraph (c)(4) to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

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

* * * * *

(4) After the first 24 months of the HAP contract term, the payment standard for a family is the payment standard as determined in accordance with paragraphs (c)(1) and (c)(2) of this section, as determined at the effective date of the most recent regular reexamination of family income and composition after the beginning of the HAP contract term.

* * * * *

23. Revise § 982.508 to read as follows:

§ 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, 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.

§ 982.514 [Amended]

24. In § 982.514, amend paragraph (b) by inserting the parenthetical ''(''utility reimbursement'')'' after the phrase ''the balance of the housing assistance payment''.

25. Amend § 982.515 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 982.515 Family share: Family responsibility.

* * * * *

(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.

26. Amend § 982.516 by revising paragraph (a)(1) and by adding new paragraph (g) to read as follows:

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

(a) * * *

(1) *PHA responsibility for reexamination and verification.* The PHA must conduct a reexamination of family income and composition at least annually.

* * * * *

(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 part 760 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.

27. Amend § 982.552 as follows:

a. Revise the section heading and remove and reserve paragraph (b)(1);

b. Revise paragraphs (c)(1)(ii) and (c)(1)(x) to read as set forth below;

c. Remove paragraph (c)(3), and revise paragraph (c)(2) to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(c) * * *

(1) * * *

(ii) If any member of the family has been evicted from federally assisted housing in the last five years;

* * * * *

(x) If a welfare-to-work (WTW) family fails to fulfill its obligations under the welfare-to-work voucher program.

(2) *PHA discretion to consider circumstances.* In determining whether to deny admission or terminate assistance because of action or failure to act by members of the family:

(i) The PHA has discretion to consider all of the circumstances in each case, including 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) 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.

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28. Amend § 982.623 by revising paragraph (b)(1) to read as follows:

§ 982.623 Manufactured home space rental: Housing assistance payment.

* * * * *

(b) * * *

(1) There is a separate fair market rent for a manufactured home space. The FMR for a manufactured home space is determined in accordance with § 888.113(e) of this title. The FMR for a manufactured home space is generally 40 percent of the published FMR for a two-bedroom unit.

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Dated: October 14, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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