

**PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM**

**Subpart A—General Information**

- Sec.  
 982.1 Tenant-based programs: Purpose and structure.  
 982.2 Applicability.  
 982.3 HUD.  
 982.4 Definitions.  
 982.5 Notices required by this part.

**Subpart B—HUD Requirements and HA Plan for Administration of Program**

- 982.51 HA authority to administer program.  
 982.52 HUD requirements.  
 982.53 Equal opportunity requirements.  
 982.54 Administrative plan.

**Subpart C—Funding and HA Application for Funding**

- 982.101 Allocation of funding.  
 982.102 HA application for funding.  
 982.103 HUD review of application.

**Subpart D—Annual Contributions Contract and HA Administration of Program**

- 982.151 Annual contributions contract.  
 982.152 Administrative fee.  
 982.153 HA responsibilities.  
 982.154 ACC reserve account.  
 982.155 Administrative fee reserve.  
 982.156 Depository for program funds.  
 982.157 Budget and expenditure.  
 982.158 Program accounts and records.  
 982.159 Audit requirements.  
 982.160 HUD determination to administer a local program.  
 982.161 Conflict of interest.  
 982.162 Use of HUD-required contracts and other forms.  
 982.163 Fraud recoveries.

**Subpart E—Admission to Tenant-Based Program**

- 982.201 Eligibility.  
 982.202 How applicants are selected: General requirements.  
 982.203 Special admission (non-waiting list): Assistance targeted by HUD.  
 982.204 Waiting list: Administration of waiting list.  
 982.205 Waiting list: Single list; area covered.  
 982.206 Waiting list: Opening and closing; public notice.

- 982.207 Waiting list: Use of preferences.

**Subpart F—[Reserved]**

**Subpart G—Leasing a Unit**

- 982.301 Information when family is selected.  
 982.302 Issuance of certificate or voucher; Requesting HA approval to lease a unit.  
 982.303 Term of certificate or voucher.  
 982.304 Illegal discrimination: HA assistance to family.  
 982.305 HA approval to lease a unit.  
 982.306 HA disapproval of owner.  
 982.307 Owner responsibility for screening tenants.  
 982.308 Lease.  
 982.309 Term of assisted tenancy.  
 982.310 Owner termination of tenancy.  
 982.311 When assistance is paid.  
 982.312 Absence from unit.  
 982.313 Security deposit; Amounts owed by tenant.  
 982.314 Move with continued tenant-based assistance.  
 982.315 Family break-up.

**Subpart H—Where Family Can Live and Move**

- 982.351 Overview.  
 982.352 Eligible housing.  
 982.353 Where family can lease a unit with tenant-based assistance.  
 982.354 Portability: Administration by initial HA outside the initial HA jurisdiction.  
 982.355 Portability: Administration by receiving HA.

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

- 982.401 Housing quality standards (HQS).  
 982.402 Subsidy standards.  
 982.403 Terminating HAP contract: When unit is too big or too small.  
 982.404 Maintenance: Owner and family responsibility; HA remedies.  
 982.405 HA periodic unit inspection.  
 982.406 Enforcement of HQS.

**Subpart J—Housing Assistance Payments Contract and Owner Responsibility**

- 982.451 Housing assistance payments contract.  
 982.452 Owner responsibilities.  
 982.453 Owner breach of contract.  
 982.454 Termination of HAP contract: Insufficient funding.  
 982.455 Termination of HAP contract: Expiration and opt-out.  
 982.456 Third parties.  
 982.457 Owner refusal to lease.

Subpart K—Rent and Housing Assistance  
Payment—[Reserved]

Subpart L—Family Obligations; Denial and  
Termination of Assistance

- 982.551 Obligations of participant.  
982.552 HA denial or termination of assist-  
ance for family.  
982.553 Crime by family members.  
982.554 Informal review for applicant.  
982.555 Informal hearing for participant.

Subpart M—Special Housing Types—  
[Reserved]

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

SOURCE: 59 FR 36682, July 18, 1994, unless  
otherwise noted.

Subpart A—General Information

SOURCE: 60 FR 34695, July 3, 1995, unless  
otherwise noted.

**§ 982.1 Tenant-based programs: Pur-  
pose and structure.**

(a) *General description.* (1) The HUD rental voucher program and the HUD rental certificate program provide rent subsidies so eligible families can afford rent for decent, safe, and sanitary housing. Both programs are administered by State, local governmental or tribal bodies called housing agencies (HAs). HUD provides funds to an HA for rent subsidy on behalf of eligible families. HUD also provides funds for HA administration of the programs.

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

(3) In the certificate program, the rental subsidy is generally based on the actual rent of a unit leased by the assisted family. In the voucher program, the rental subsidy is determined by a formula, and is not based on the actual rent of the leased unit.

(4) In the certificate program, the unit rent generally may not exceed a HUD-published fair market rent for rental units in the local housing market. For most families, the subsidy is

the difference between the unit rent and 30 percent of adjusted monthly income. In the voucher program, the subsidy for most families is the difference between 30 percent of adjusted monthly income and a "payment standard" that is based on the HUD-published fair market rent. If the unit rent is less than the voucher payment standard, the family pays a smaller share of the rent. If the unit rent is more than the payment standard, the family pays a larger share of the rent.

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

(2) Except for project-based assistance under the certificate program (covered in 24 CFR part 983), all assistance under the certificate and voucher programs is "tenant-based". After the family selects a suitable unit, the HA enters into a contract with the owner to make rent subsidy payments to the owner to subsidize occupancy by the family. The contract only covers a single unit and the specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. In the tenant-based programs, the family may move to another unit with continued assistance so long as the family is complying with program requirements.

**§ 982.2 Applicability.**

(a) Part 982 is a unified statement of program requirements for the tenant-based housing assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based programs are the Section 8 tenant-based rental certificate program and the Section 8 rental voucher program.

(b) Unless specifically stated in this part, requirements for both tenant-based programs are the same.

**§ 982.3 HUD.**

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

**§ 982.4 Definitions.**

*Absorption.* In portability, the point at which a receiving HA stops billing the initial HA for assistance on behalf of a portability family. The receiving HA uses funds available under the receiving HA consolidated ACC.

*ACC.* Annual contributions contract.

*ACC reserve account* (formerly "project reserve"). Account established by HUD from amounts by which the maximum payment to the HA under the consolidated ACC (during an HA fiscal year) exceeds the amount actually approved and paid. This account is used as the source of additional payments for the program.

*Adjusted income.* Defined in 24 CFR 813.102.

*Administrative fee.* Fee paid by HUD to the HA for administration of the program.

*Administrative fee reserve* (formerly "operating reserve"). Account established by HA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See § 982.155.

*Administrative plan.* The administrative plan describes HA policies for administration of the tenant-based programs. See Part B of part 982. Section 982.54 describes subjects that must be covered in the administrative plan.

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

*Annual contributions contract (ACC).* A written contract between HUD and an HA. Under the contract HUD agrees to provide funding for operation of the program, and the HA agrees to comply with HUD requirements for the program.

*Annual income.* Defined in 24 CFR 813.106.

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

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

*Certificate.* A document issued by an HA to a family selected for admission to the rental certificate program. The certificate describes the program, and the procedures for HA approval of a unit selected by the family. The certificate also states the obligations of the family under the program.

*Certificate or voucher holder.* A family holding a voucher or certificate with unexpired search time.

*Certificate program.* Rental certificate program.

*Consolidated annual contributions contract* (consolidated ACC). See § 982.151.

*Contiguous MSA.* In portability, an MSA that shares a common boundary with the MSA in which the jurisdiction of the initial HA is located.

*Continuously assisted.* An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program.

*Contract authority.* The maximum annual payment by HUD to an HA for a funding increment.

*Disabled person.* See the definition of *Person with disabilities*.

*Displaced person.* Defined in 24 CFR 812.2.

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

*Drug-related criminal activity.* Term means:

- (1) Drug-trafficking; or
- (2) Illegal use, or possession for personal use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

*Drug-trafficking.* The illegal manufacture, sale or distribution, or the possession with intent to manufacture, sell or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

*Elderly person.* A person who is at least 62 years of age.

*Eligibility.* See § 982.201.

*Exception rent.* In the certificate program, an initial rent (contract rent plus any utility allowance) in excess of the published FMR. In the certificate program, the exception rent is approved by HUD, and is used in determining the initial contract rent. In the voucher program, the HA may adopt a payment standard up to the exception rent limit approved by HUD for the HA certificate program.

*Fair market rent (FMR).* The rent, including the cost of utilities (except telephone), that would be required to be paid in the housing market area to obtain privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. Fair market rents for existing housing are established by HUD for housing units of varying sizes (number of bedrooms), and are published in the FEDERAL REGISTER in accordance with 24 CFR part 888.

*Family.* See 24 CFR 812.2. Family composition is discussed at § 982.201(c).

*Family self-sufficiency program (FSS program).* The program established by an HA to promote self-sufficiency of assisted families, including the provision of supportive services (42 U.S.C. 1437u). See 24 CFR part 984.

*Family unit size.* The appropriate number of bedrooms for a family. Family unit size is determined by the HA under the HA subsidy standards.

*FMR.* Fair market rent.

*FMR/exception rent limit.* The Section 8 existing housing fair market rent published by HUD headquarters, or any exception rent. In the certificate program, the initial contract rent for a dwelling unit plus any utility allowance may not exceed the FMR/exception rent limit (for the dwelling unit or for the family unit size). In the voucher program, the HA may adopt a payment standard up to the FMR/exception rent limit.

*FSS program.* Family self-sufficiency program.

*Funding increment.* Each commitment of budget authority by HUD to an HA under the consolidated annual contributions contract for the HA program.

*HA.* Housing Agency.

*HAP contract.* Housing assistance payments contract.

*Housing agency (HA).* A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing, including an Indian housing authority (IHA). (“PHA” and “HA” mean the same thing.)

*Housing assistance payment.* The monthly assistance payment by an HA. The total assistance payment consists of:

(1) A payment to the owner for rent to owner under the family’s lease.

(2) An additional payment to the family if the total assistance payment exceeds the rent to owner. In the certificate program, the additional payment is called a “utility reimbursement”.

*Housing assistance payments contract (HAP contract).* A written contract between an HA and an owner, in the form prescribed by HUD headquarters, in which the HA agrees to make housing assistance payments to the owner on behalf of an eligible family.

*Housing quality standards (HQS).* The HUD minimum quality standards for housing assisted under the tenant-based programs. See § 982.401.

*HQS.* Housing quality standards.

*HUD.* The U.S. Department of Housing and Urban Development.

*HUD requirements.* HUD requirements for the Section 8 programs. HUD requirements are issued by HUD headquarters, as regulations, FEDERAL REGISTER notices or other binding program directives.

*IHA.* Indian housing authority.

*Indian.* Any person recognized as an Indian or Alaska Native by an Indian Tribe, the federal government, or any State.

*Indian housing authority (IHA).* A housing agency established either:

(1) By exercise of the power of self-government of an Indian Tribe, independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians.

*Initial contract rent.* In the certificate program, the contract rent at the beginning of the initial lease term.

*Initial HA.* In portability, the term refers to both:

(1) An HA that originally selected a family that subsequently decides to move out of the jurisdiction of the selecting HA.

(2) An HA that absorbed a family that subsequently decides to move out of the jurisdiction of the absorbing HA.

*Initial lease term.* The initial term of the assisted lease. The initial lease term must be for at least one year.

*Initial rent to owner.* The rent to owner at the beginning of the initial lease term.

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

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

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

*Lease addendum.* In the lease between the tenant and the owner, the lease language required by HUD.

*Live-in aide.* Defined in 24 CFR 813.102.

*Low-income family.* Defined in 24 CFR 813.102. (Section 982.201(b) describes when a low-income family is income-eligible for admission to the certificate or voucher program.)

*MSA.* Metropolitan statistical area.

*1937 Housing Act.* The United States Housing Act of 1937 (42 U.S.C. 1437 and following sections). The HUD tenant-based program is authorized by Section 8 of the 1937 Housing Act (42 U.S.C. 1437f).

*1937 Housing Act program.* Any of the following programs:

(1) The public housing program or Indian housing program.

(2) Any program assisted under Section 8 of the 1937 Act (42 U.S.C. 1437f) (including assistance under a Section 8 tenant-based or project-based program).

(3) The Section 23 leased housing program.

(4) The Section 23 housing assistance payments program. ("Section 23" means Section 23 of the United States Housing Act of 1937 before enactment of the Housing and Community Development Act of 1974.)

*NOFA.* Notice of funding availability.

*Notice of funding availability (NOFA).* For funding (contract or budget authority) that HUD distributes by competitive process, HUD headquarters invites HA applications by publishing a NOFA in the FEDERAL REGISTER. The NOFA explains how to apply for assistance, and the criteria for awarding the funding.

*Operating reserve.* Administrative fee reserve.

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

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

*Payment standard.* In the voucher program, an amount used by the HA to calculate the housing assistance payment for a family. Each payment standard amount is based on the fair market rent. The HA adopts a payment standard for each bedroom size and for each fair market rent area in the HA jurisdiction. The payment standard for a family is the maximum monthly subsidy payment.

*PBC.* Project-based certificate program. See 24 CFR part 983.

*Person with disabilities* (disabled person). Defined in 24 CFR 813.102.

*PHA*. Public housing agency. See definition of "housing agency". ("Public housing agency" and "housing agency" mean the same thing.)

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

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

*Program*. The tenant-based certificate program or voucher program.

*Project-based*. Rental assistance that is attached to the structure.

*Project-based certificate program* (PBC). Project-based assistance under 24 CFR part 983, using funding under the consolidated ACC for the HA certificate program.

*Project reserve*. ACC reserve account. See § 982.154.

*Public housing agency* (PHA). A Housing Agency (HA).

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

(1) Rent charged for comparable units in the private unassisted market; or

(2) Rent charged by the owner for a comparable assisted or unassisted unit in the building or premises.

*Receiving HA*. In portability, an HA that receives a family selected for participation in the tenant-based program of another HA. The receiving HA issues a certificate or voucher, and provides program assistance to the family.

*Rental certificate*. Certificate.

*Rental certificate program*. Certificate program.

*Rental voucher*. Voucher.

*Rental voucher program*. Voucher program.

*Rent to owner*. The monthly rent payable to the owner under the lease. Rent to owner includes payment for any services, maintenance and utilities to be provided by the owner in accordance with the lease.

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

*Subsidy standards*. Standards established by an HA to determine the appropriate number of bedrooms and amount of subsidy for families of dif-

ferent sizes and compositions. See definition of "family unit size".

*Suspension*. Stopping the clock on the term of a family's certificate or voucher, for such period as determined by the HA, from the time when the family submits a request for HA approval to lease a unit, until the time when the HA approves or denies the request.

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

*Tenant-based*. Rental assistance that is not attached to the structure.

*Tenant rent*. In the certificate program, total tenant payment minus any utility allowance.

*Total tenant payment*. In the certificate program, defined in 24 CFR 813.102 and 24 CFR 813.107.

*Unit*. Dwelling unit.

*United States Housing Act of 1937* (1937 Housing Act). The basic law that authorizes the public and Indian housing programs, and the Section 8 programs. (42 U.S.C. 1437 and following sections.)

*Utility allowance*. Defined in 24 CFR 813.102.

*Utility reimbursement*. In the certificate program, the amount, if any, by which any utility allowance for family-paid utilities or other housing services exceeds the total tenant payment.

*Very low-income family*. Defined in 24 CFR 813.102.

*Violent criminal activity*. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

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

*Voucher program*. Rental voucher program.

*Waiting list admission*. An admission from the HA waiting list.

#### § 982.5 Notices required by this part.

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

### Subpart B—HUD Requirements and HA Plan for Administration of Program

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

#### §982.51 HA authority to administer program.

(a) The HA must be a governmental entity or public body with authority to administer the tenant-based program. The HA must provide HUD evidence, satisfactory to HUD, of such authority, and of the HA jurisdiction.

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

#### §982.52 HUD requirements.

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

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

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

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

#### §982.53 Equal opportunity requirements.

(a) Participation in the tenant-based program requires compliance with all equal opportunity requirements imposed by contract or federal law, including applicable requirements under:

(1) The Fair Housing Act, 42 U.S.C. 3610-3619 (implementing regulations at 24 CFR parts 100, *et seq.*);

(2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (implementing regulations at 24 CFR part 1);

(3) The Age Discrimination Act of 1975, 42 U.S.C. 6101-6107 (implementing regulations at 24 CFR part 146);

(4) Executive Order 11063, Equal Opportunity in Housing (1962), as amend-

ed, Executive Order 12259, 46 FR 1253 (1980), as amended, Executive Order 12892, 59 FR 2939 (1994) (implementing regulations at 24 CFR part 107);

(5) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (implementing regulations at 24 CFR part 8); and

(6) Title II of the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.*

(b) For the application of equal opportunity requirements to an Indian Housing Authority, *see* 24 CFR 950.115.

(c) The HA must submit a signed certification to HUD of the HA's intention to comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. (Approved by the Office of Management and Budget under control number 2577-0169)

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

#### §982.54 Administrative plan.

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

(b) The administrative plan must be in accordance with HUD regulations and other requirements. The HA must revise the administrative plan if needed to comply with HUD requirements. The HA must give HUD a copy of the administrative plan.

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

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

(1) How the HA selects applicants from the HA waiting list, including applicants with federal and other preferences (see §§982.202(b)(2) and 982.208(b)), procedures for removing applicant names from the waiting list,

and procedures for closing and reopening the HA waiting list;

(2) Issuing or denying vouchers or certificates, including HA policy governing the voucher or certificate term and any extensions or suspension of the term. "Suspension" means stopping the clock on the term of a family's certificate or voucher after the family submits a request for lease approval. If the HA decides to allow extensions or suspensions of the certificate or voucher term, the HA administrative plan must describe how the HA determines whether to grant extensions or suspensions, and how the HA determines the length of any extension or suspension;

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

(4) Occupancy policies, including:

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

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

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

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

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

(8) Disapproval of owners;

(9) Subsidy standards;

(10) Family absence from the dwelling unit;

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

(12) Informal review procedures for applicants;

(13) Informal hearing procedures for participants;

(14) For the voucher program: the process for establishing and revising payment standards, including affordability adjustments;

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

(16) Policies concerning payment by a family to the HA of amounts the family owes the HA;

(17) Interim redeterminations of family income and composition;

(18) Restrictions, if any, on the number of moves by a participant family (see § 982.314(c)); and

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

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996]

### Subpart C—Funding and HA Application for Funding

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

#### § 982.101 Allocation of funding.

(a) *Allocation to HUD offices.* The Department allocates budget authority for the tenant-based programs to HUD field offices.

(b) *Section 213(d) allocation.* (1) Section 213(d) of the HCD Act of 1974 (42 U.S.C. 1439) establishes requirements for allocation of assisted housing budget authority. Some budget authority is exempt by law from allocation under section 213(d). Unless exempted by law, budget authority for the tenant-based programs must be allocated in accordance with section 213(d).

(2) Budget authority subject to allocation under section 213(d) is allocated in accordance with 24 CFR part 791, subpart D. There are three categories of section 213(d) funding allocations under part 791 of this title:

(i) funding retained in a headquarters reserve for purposes specified by law (e.g., settlement of litigation);

(ii) funding incapable of geographic formula allocation (e.g., for renewal of expiring funding increments); or

(iii) funding allocated by an objective fair share formula. Funding allocated by fair share formula is distributed by a competitive process.

(c) *Competitive process.* For budget authority that is distributed by competitive process, the Department solicits

applications from HAs by publishing one or more notices of funding availability (NOFA) in the FEDERAL REGISTER. See 24 CFR part 12, subpart B; and 24 CFR 791.406. The NOFA explains how to apply for assistance, and specifies the criteria for awarding the assistance. The NOFA may identify any special program requirements for use of the funding.

**§ 982.102 HA application for funding.**

(a) An HA must submit an application for program funding to HUD at the time and place and in the form required by HUD.

(b) For competitive funding under a NOFA, the application must be submitted by an HA in accordance with the requirements of the NOFA.

(c) The application must include all information required by HUD. HUD requirements may be stated in the HUD-required form of application, the NOFA, or other HUD instructions.

(d) The application must meet requirements of:

(1) HUD's drug-free workplace regulations at 24 CFR part 24, subpart F; and

(2) HUD's anti-lobbying regulations at 24 CFR part 87.

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

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

**§ 982.103 HUD review of application.**

(a) *Processing applications.* (1) HUD will provide opportunity for the chief executive officer of the unit of general local government to review and comment on an application for funding for more than 12 units. The local comment requirements are stated in 24 CFR part 791, subpart C.

(2) For competitive funding under a NOFA, HUD must evaluate an application on the basis of the selection criteria stated in the NOFA, and must consider the HA capability to administer the program.

(3) HUD must consider any comments received from the unit of general local government.

(b) *Approval or disapproval of HA funding application.* (1) HUD must notify the HA of its approval or disapproval of the HA funding application.

(2) When HUD approves an application, HUD must notify the HA of the amount of approved funding.

(3) For budget authority that is distributed to HAs by competitive process, documentation of the basis for provision or denial of assistance is available for public inspection in accordance with 24 CFR 12.14(b).

**Subpart D—Annual Contributions Contract and HA Administration of Program**

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

**§ 982.151 Annual contributions contract.**

(a) *Nature of ACC.* (1) An annual contributions contract (ACC) is a written contract between HUD and an HA. Under the ACC, HUD agrees to make payments to the HA, over a specified term, for housing assistance payments to owners and for the HA administrative fee. The ACC specifies the maximum annual payment by HUD, and the maximum payment over the ACC term. The HA agrees to administer the program in accordance with HUD regulations and requirements.

(2) HUD's commitment to make payments for each funding increment in the HA program constitutes a separate ACC. However, commitments for all the funding increments in an HA program are listed in one consolidated contractual document called the consolidated annual contributions contract (consolidated ACC). A single consolidated ACC covers funding for the HA certificate program and voucher program.

(b) *Budget authority and contract authority.* (1) Budget authority is the maximum amount that may be paid by HUD to an HA over the ACC term of a funding increment. Contract authority is the maximum annual payment for the funding increment. Budget authority for a funding increment is equal to contract authority times the number of years in the increment term. Before adding a funding increment to the consolidated ACC for an HA program, HUD reserves budget authority from amounts authorized and appropriated by the Congress for the program.

(2) For each funding increment, the ACC specifies the initial term over which HUD will make payments for the HA program, and the contract authority and budget authority for the funding increment. For a given HA fiscal year, the amount of HUD's maximum annual payment for the HA program equals the sum of the contract authority for all of the funding increments under the consolidated ACC. However, this maximum amount does not include contract authority for an expired funding increment. If the term of a funding increment expires during the HA fiscal year, this maximum amount only includes the pro-rata portion of contract authority for the portion of the HA fiscal year prior to expiration. (Additional payments may be made from the ACC reserve account described in §982.154.) However, the amount to be paid must be approved by HUD, and may be less than the maximum payment.

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

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

**§ 982.152 Administrative fee.**

(a) *Purposes of administrative fee.* (1) HUD may approve administrative fees to the HA for any of the following purposes:

- (i) Ongoing administrative fee;
- (ii) Preliminary fee;
- (iii) Cost to help families who experience difficulty renting appropriate housing;
- (iv) Cost to coordinate supportive services for elderly and disabled families;
- (v) Cost to coordinate supportive services for families participating in the family self-sufficiency (FSS) program;
- (vi) Cost of audit by an independent public accountant; and
- (vii) Other extraordinary costs determined necessary by HUD Headquarters.

(2) For each HA fiscal year, administrative fees are specified in the HA budget. The budget is submitted for HUD approval. Fees are paid in the amounts approved by HUD. Administrative fees may only be approved or paid from amounts appropriated by the Congress.

(b) *Ongoing administrative fee.* (1) The HA ongoing administrative fee is paid for each program unit under HAP contract on the first day of the month. The amount of the ongoing fee is established by HUD.

(2) If appropriations are available, HUD may pay a higher ongoing administrative fee for a small program or a program operating over a large geographic area. This higher fee level will not be approved unless the HA demonstrates that it is efficiently administering its tenant-based program, and that the higher ongoing administrative fee is reasonable and necessary for administration of the program in accordance with HUD requirements.

(3) HUD may pay a lower ongoing administrative fee for HA-owned units.

(c) *Preliminary fee.* (1) A preliminary fee is paid by HUD for each new unit added to the HA program. The preliminary fee is a one time fee for each new unit supported by a new funding increment. HUD establishes the maximum preliminary fee.

(2) The preliminary fee is used to cover expenses that the HA documents it has incurred to help families who inquire about or apply for the program, to lease up new units, or to pay for family self-sufficiency program activities.

(d) *Reducing HA administrative fee.* HUD may reduce or offset any administrative fee to the HA, in the amount determined by HUD, if the HA fails to perform HA administrative responsibilities correctly or adequately under the program (for example, HA failure to enforce HQS requirements; or to reimburse a receiving HA promptly under portability procedures).

**§ 982.153 HA responsibilities.**

(a) The HA must comply with the consolidated ACC, the application, HUD regulations and other requirements, and the HA administrative plan.

(b) In administering the program, the HA must:

- (1) Publish and disseminate information about the availability and nature of housing assistance under the program;
- (2) Explain the program to owners and families;

(3) Seek expanded opportunities for assisted families to locate housing outside areas of poverty or racial concentration;

(4) Encourage owners to make units available for leasing in the program, including owners of suitable units located outside areas of poverty or racial concentration;

(5) Affirmatively further fair housing goals and comply with equal opportunity requirements;

(6) Make efforts to help disabled persons find satisfactory housing;

(7) Receive applications from families, determine eligibility, maintain the waiting list, select applicants, issue a voucher or certificate to each selected family, provide housing information to families selected;

(8) Determine who can live in the assisted unit, at admission and during the family's participation in the program;

(9) Obtain and verify evidence of citizenship and eligible immigration status in accordance with 24 CFR part 5.

(10) Review the family's request for approval of the unit and lease;

(11) Inspect the unit before assisted occupancy and at least annually during the assisted tenancy;

(12) Determine the amount of the housing assistance payment for a family;

(13) Determine the maximum rent to the owner, and whether the rent is reasonable;

(14) Make timely housing assistance payments to an owner in accordance with the HAP contract;

(15) Examine family income, size and composition, at admission and during the family's participation in the program. The examination includes verification of income and other family information;

(16) Establish and adjust HA utility allowance;

(17) Administer and enforce the housing assistance payments contract with an owner, including taking appropriate action, as determined by the HA, if the owner defaults (e.g., HQS violation);

(18) Determine whether to terminate assistance to a participant family for violation of family obligations;

(19) Conduct informal reviews of certain HA decisions concerning applicants for participation in the program;

(20) Conduct informal hearings on certain HA decisions concerning participant families;

(21) Provide sound financial management of the program, including engaging an independent public accountant to conduct audits; and

(22) Administer an FSS program (if applicable).

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996]

#### § 982.154 ACC reserve account.

(a)(1) HUD establishes an unfunded reserve account, called the ACC reserve account (formerly "project reserve"), for the HA's program. There are separate ACC reserve accounts for the HA's certificate and voucher programs. The ACC reserve account is established and maintained in the amount determined by HUD.

(2) At the end of each HA fiscal year, HUD credits the ACC reserve account from the amount by which the sum of contract authority for all funding increments under the consolidated ACC (maximum annual payment) exceeds the amount actually approved and paid for the HA fiscal year. However, the maximum annual payment does not include contract authority for an expired funding increment. If the term of a funding increment expires during the HA fiscal year, this maximum amount only includes the pro-rata portion of contract authority for the funding increment covering the portion of the HA fiscal year prior to expiration.

(b) HUD may approve additional payments for the HA program from available amounts in the ACC reserve account.

#### § 982.155 Administrative fee reserve.

(a) The HA must maintain an administrative fee reserve (formerly "operating reserve") for the program. There are separate administrative fee reserve accounts for the HA's certificate and voucher programs. The HA must credit to the administrative fee reserve the total of:

(1) The amount by which program administrative fees paid by HUD for an HA fiscal year exceed the HA program administrative expenses for the fiscal year; plus

(2) Interest earned on the administrative fee reserve.

(b)(1) The HA must use funds in the administrative fee reserve to pay program administrative expenses in excess of administrative fees paid by HUD for an HA fiscal year. If funds in the administrative fee reserve are not needed to cover HA administrative expenses (to the end of the last expiring funding increment under the consolidated ACC), the HA may use these funds for other housing purposes permitted by State and local law. However, HUD may prohibit use of the funds for certain purposes.

(2) The HA Board of Commissioners or other authorized officials must establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

(3) If the HA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the HA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses.

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

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

**§ 982.156 Depository for program funds.**

(a) Unless otherwise required or permitted by HUD, all program receipts must be promptly deposited with a financial institution selected as depository by the HA in accordance with HUD requirements.

(b) The HA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.

(c) The HA must enter into an agreement with the depository in the form required by HUD.

(d)(1) If required under a written freeze notice from HUD to the depository:

(i) The depository may not permit any withdrawal by the HA of funds held under the depository agreement unless expressly authorized by written notice from HUD to the depository; and

(ii) The depository must permit withdrawals of such funds by HUD.

(2) HUD must send the HA a copy of the freeze notice from HUD to the depository.

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

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

**§ 982.157 Budget and expenditure.**

(a) *Budget submission.* Each HA fiscal year, the HA must submit its proposed budget for the program to HUD for approval at such time and in such form as required by HUD.

(b) *HA use of program receipts.* (1) HUD payments under the consolidated ACC, and any other amounts received by the HA in connection with the program, must be used in accordance with the HA HUD-approved budget. Such HUD payments and other receipts may only be used for:

- (i) Housing assistance payments; and
- (ii) HA administrative fees.

(2) The HA must maintain a system to ensure that the HA will be able to make housing assistance payments for all participants within the amounts contracted under the consolidated ACC.

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

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

**§ 982.158 Program accounts and records.**

(a) The HA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. The records must be in the form required by HUD, including requirements governing computerized or electronic forms of record-keeping.

(b) The HA must furnish to HUD accounts and other records, reports, documents and information, as required by HUD. For provisions on electronic

transmission of required family data, see 24 CFR part 908.

(c) HUD and the Comptroller General of the United States shall have full and free access to all HA offices and facilities, and to all accounts and other records of the HA that are pertinent to administration of the program, including the right to examine or audit the records, and to make copies. The HA must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and shall provide any information or assistance needed to access the records.

(d) The HA must prepare a unit inspection report.

(e) During the term of each assisted lease, and for at least three years thereafter, the HA must keep:

- (1) A copy of the executed lease;
- (2) The HAP contract; and
- (3) The application from the family.

(f) The HA must keep the following records for at least three years:

- (1) Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- (2) An application from each ineligible family and notice that the applicant is not eligible;
- (3) HUD-required reports;
- (4) Unit inspection reports;
- (5) Lead-based paint inspection records (as required by § 982.401(j));
- (6) Accounts and other records supporting HA budget and financial statements for the program; and
- (7) Other records specified by HUD.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996]

#### § 982.159 Audit requirements.

(a) The HA must engage and pay an independent public accountant to conduct audits in accordance with HUD requirements.

(b) The HA is subject to the audit requirements in 24 CFR part 44.

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

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

#### § 982.160 HUD determination to administer a local program.

If the Assistant Secretary for Public and Indian Housing determines that there is no HA organized, or that there is no HA able and willing to implement the provisions of this part for an area, HUD (or an entity acting on behalf of HUD) may enter into HAP contracts with owners and perform the functions otherwise assigned to HAs under this part with respect to the area.

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

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

#### § 982.161 Conflict of interest.

(a) Neither the HA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- (1) Any present or former member or officer of the HA (except a participant commissioner);
- (2) Any employee of the HA, or any contractor, subcontractor or agent of the HA, who formulates policy or who influences decisions with respect to the programs;
- (3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or
- (4) Any member of the Congress of the United States.

(b) Any member of the classes described in paragraph (a) of this section must disclose their interest or prospective interest to the HA and HUD.

(c) The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

#### § 982.162 Use of HUD-required contracts and other forms.

(a) The HA must use program contracts and other forms required by HUD headquarters, including:

- (1) The consolidated ACC between HUD and the HA;
- (2) The HAP contract between the HA and the owner; and

(3) The lease language required by HUD (in the lease between the owner and the tenant).

(b) Required program contracts and other forms must be word-for-word in the form required by HUD headquarters. Any additions to or modifications of required program contracts or other forms must be approved by HUD headquarters.

**§ 982.163 Fraud recoveries.**

Under 24 CFR part 792, the HA may retain a portion of program fraud losses that the HA recovers from a family or owner by litigation, court-order or a repayment agreement.

[60 FR 34695, July 3, 1995; 60 FR 43840, Aug. 23, 1995]

**Subpart E—Admission to Tenant-Based Program**

**§ 982.201 Eligibility.**

(a) *When applicant is eligible: general.* The HA may only admit an eligible family to a program. To be eligible, the applicant must be a “family”, must be income-eligible, and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5.

(b) *Income.* (1) *To be income eligible, the family must be either:*

(i) A “very low-income” family; or

(ii) A “low-income” family in any of the following categories:

(A) A low-income family that is “continuously assisted” under the 1937 Housing Act.

(B) A low-income family physically displaced by rental rehabilitation activity under 24 CFR part 511.

(C) A low-income non-purchasing family residing in a HOPE 1 (HOPE for Public and Indian Housing Homeownership) or HOPE 2 (HOPE for Homeownership of Multifamily Units) project.

(D) A low-income non-purchasing family residing in a project subject to a homeownership program under 24 CFR 248.173.

(E) A low-income family displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract under 24 CFR 248.165.

(F) For the certificate program only, a low-income family residing in a HUD-owned multifamily rental housing project when HUD sells, forecloses or demolishes the project.

(2) The HA determines whether the family is income-eligible by comparing the family’s annual income (gross income) with the HUD-established very low-income limit or low-income limit for the area. The applicable income limit for issuance of a certificate or voucher when a family is selected for the program is the highest income limit (for the family unit size) for areas in the HA jurisdiction. The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted in the program. The family may only use the certificate or voucher to rent a unit in an area where the family is income eligible at admission to the program.

(c) *Family composition.* (1) A “family” may be a single person or a group of persons.

(2) A “family” includes a family with a child or children.

(3) A group of persons consisting of two or more elderly persons or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides is a family. The HA determines if any other group of persons qualifies as a “family”.

(4) A single person family may be:

(i) An elderly person.

(ii) A displaced person.

(iii) A disabled person.

(iv) Any other single person.

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

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

(2) The HA must establish policies concerning whether and to what extent a brief interruption between assistance under one of these programs and admission to the certificate or voucher program will be considered to break

continuity of assistance under the 1937 Housing Act.

(e) *When HA verifies that applicant is eligible.* The HA must receive information verifying that an applicant is eligible within the period of 60 days before the HA issues a certificate or voucher to the applicant.

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

(2) *Grounds for decision.* For a discussion of the grounds for denying assistance because of action or inaction by the applicant, see § 982.552.

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 61 FR 13627, Mar. 27, 1996]

**§ 982.202 How applicants are selected: General requirements.**

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

(1) As a special admission (see § 982.203).

(2) As a waiting list admission (see § 982.204 through § 982.210).

(b) *Prohibited admission criteria—(1) Family suitability for tenancy.* The owner selects the tenant. The owner decides whether the family is suitable for tenancy. The HA decision whether to admit an applicant to the program may not be based on an applicant's suitability for tenancy. The HA may deny assistance to an applicant because of drug-related criminal activity or violent criminal activity by family members. (See § 982.553.)

(2) *Where family lives.* Admission to the program may not be based on where the family lives before admission to the program. However, the HA may target assistance for families who live in public housing or other federally assisted housing, or may adopt a

HUD-approved residency preference (see § 982.208).

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

(4) *Family characteristics.* Admission to the program may not be based on:

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

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

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

(iv) Discrimination because of disability; or

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

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

(d) *Admission policy.* The HA must admit applicants for participation in accordance with HUD regulations and other requirements, and with policies stated in the HA administrative plan. The HA admission policy must state the system of admission preferences that the HA uses to select applicants from the waiting list, including any federal preference, ranking preference, local preference and residency preference.

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 61 FR 9048, Mar. 6, 1996; 61 FR 27163, May 30, 1996]

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

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

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

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

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

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

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

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

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

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

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

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

**§ 982.204 Waiting list: Administration of waiting list.**

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

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

(1) Applicant name;

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

(3) Date and time of application;

(4) Qualification for federal preference;

(5) Qualification for any ranking preference or local preference; and

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

(c) *Removing applicant names from the waiting list.* (1) The HA administrative plan must state HA policy on when applicant names may be removed from the waiting list. For example, the policy may provide that the HA will remove names of applicants who do not respond to HA requests for information or updates, or who have refused offers of tenant-based assistance under both the certificate program and the voucher program.

(2) The system for removing applicant names from the waiting list may not violate the rights of a disabled person under HUD regulations and requirements. For example, if an applicant's failure to respond to HA requests for information or updates was caused by the applicant's disability, the HA must provide reasonable accommodation to give the applicant an opportunity to respond.

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

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

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

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

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995]

**§ 982.205 Waiting list: Single list; area covered.**

(a) *Tenant-based programs: Number of waiting lists.* (1) An HA must use a single waiting list for admissions to its tenant-based certificate and voucher programs. The HA may use a separate

waiting list for such admissions for an area not smaller than a county or municipality.

(2) An HA must use the same waiting list for admission to its tenant-based certificate and voucher programs.

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

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

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

(ii) If the HA's waiting list for its public or Indian housing program, project-based certificate program or moderate rehabilitation program is open when an applicant is placed on the waiting list for its tenant-based program, and if the other program includes units suitable for the applicant, the HA must offer to place the applicant on its waiting list for the other program.

(c) *Other housing assistance: Effect of application for, receipt or refusal*. (1)(i) The HA may not take any of the following actions because an applicant has applied for, received or refused other housing assistance:

(A) Refuse to list the applicant on the HA waiting list for tenant-based assistance;

(B) Deny any admission preference for which the applicant is currently qualified; or

(C) Remove the applicant from the waiting list.

(ii) For this purpose, "other housing assistance" means a federal, State or local housing subsidy, as determined by HUD, including public or Indian housing. However, the HA may remove such applicants from the waiting list in accordance with § 982.204(c).

(2) If an applicant refuses offers of tenant-based assistance under both the certificate program and the voucher program, the HA may remove the applicant from the waiting list for tenant-based assistance.

(3) See § 982.210(c)(4) for provisions concerning retention of federal preference by an applicant that either:

(i) Receives assistance under the HOME program, or

(ii) Resides in the HA's public or Indian housing.

[59 FR 36682, July 18, 1994, as amended at 61 FR 27163, May 30, 1996]

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

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

(2) The HA must give the public notice by publication in a local newspaper of general circulation, and also by minority media.

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

(b) *Criteria defining what families may apply*. (1) The HA may adopt criteria defining what families may apply for assistance under a public notice.

*Example A*

The HA decides that applications will only be accepted from families that qualify for federal preference, or from homeless federal preference families.

*Example B*

In admission to the program, the HA must give preference to elderly families, displaced families and displaced persons over other single persons (24 CFR 812.3). The HA decides that applications from other single persons will not be accepted.

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

(c) *Closing waiting list.* (1) If the HA determines that the existing waiting list contains an adequate pool for use of available program funding, the HA may stop accepting new applications, or may accept only applications meeting criteria adopted by the HA.

(2) Even if the HA is not otherwise accepting additional applications, the HA must accept applications from applicants who claim a federal preference unless the HA determines that the waiting list already contains an adequate pool of applicants who are likely to qualify for a federal preference.

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

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 60 FR 45661, Sept. 1, 1995]

**§ 982.207 Waiting list: Use of preferences.**

(a) The HA must use the following to select among applicants on the waiting list with the same preference status:

- (1) Date and time of application; or
- (2) A drawing or other random choice technique.

(b)(1) The method for selecting applicants from preference categories must be consistent with requirements governing federal preference and the single preference, as described in 24 CFR part 5.

(2) In its system for applying the preferences described in 24 CFR part 5, the following provisions apply:

- (i) The HA may limit the number of applicants that may qualify for any ranking preference or local preference.
- (ii) The local preference limit only applies to admission of an applicant from the HA waiting list. A special admission is not counted against the local preference limit.
- (iii) The local preference limit does not apply when an applicant is received in an HA program under portability procedures. The admission of a portability family by a receiving HA does

not count against the receiving HA local preference limit. The admission of such a family (not qualified for federal preference) counts against the local preference limit of the initial HA.

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

[61 FR 9048, Mar. 6, 1996]

**Subpart F—[Reserved]**

**Subpart G—Leasing a Unit**

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

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

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

- (i) A description of how the program works;
- (ii) Family and owner responsibilities; and
- (iii) Where the family may lease a unit, including renting a dwelling unit inside or outside the HA jurisdiction.

(2) For a family that qualifies to lease a unit outside the HA jurisdiction under portability procedures, the briefing must include an explanation of how portability works. The HA may not discourage the family from choosing to live anywhere in the HA jurisdiction, or outside the HA jurisdiction under portability procedures.

(3) If the family is currently living in a high poverty census tract in the HA's jurisdiction, the briefing must also explain the advantages of moving to an area that does not have a high concentration of poor families.

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

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

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

(2)(i) How the HA determines the housing assistance payment for a family;

(ii) For the certificate program, information on fair market rents and the HA utility allowance schedule;

(iii) For the voucher program, information on the payment standard and the HA utility allowance schedule;

(3) How the HA determines the maximum rent for an assisted unit;

(4) Where the family may lease a unit. For a family that qualifies to lease a unit outside the HA jurisdiction under portability procedures, the information packet must include an explanation of how portability works;

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

(6) The form of request for lease approval, and an explanation of how to request HA approval to lease a unit;

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

(8) HA subsidy standards, including when the HA will consider granting exceptions to the standards;

(9) The HUD brochure on how to select a unit;

(10) The HUD-required lead-based paint (LBP) brochure;

(11) Information on federal, State and local equal opportunity laws, and a copy of the housing discrimination complaint form;

(12) A list of landlords or other parties known to the HA who may be willing to lease a unit to the family, or help the family find a unit;

(13) Notice that if the family includes a disabled person, the family may request a current listing of accessible units known to the HA that may be available;

(14) Family obligations under the program;

(15) The grounds on which the HA may terminate assistance for a participant family because of family action or failure to act; and

(16) HA informal hearing procedures. This information must describe when the HA is required to give a participant family the opportunity for an informal hearing, and how to request a hearing.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996]

**§ 982.302 Issuance of certificate or voucher; Requesting HA approval to lease a unit.**

(a) When a family is selected, the HA issues a certificate or voucher to the family. The family may search for a unit.

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

(c) The family must submit to the HA a request for lease approval and a copy of the proposed lease. Both documents must be submitted during the term of the certificate or voucher.

(d) The HA specifies the procedure for requesting approval to lease a unit. The family must submit the request for lease approval in the form and manner required by the HA.

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

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

**§ 982.303 Term of certificate or voucher.**

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

(b) *Extensions of term.* (1) At its discretion the HA may grant a family one or more extensions of the initial term in accordance with HA policy as described in the HA administrative plan. The initial term plus any extensions

may not exceed a total period of 120 calendar days from the beginning of the initial term. Any extension of the term is granted by HA notice to the family.

(2) If a member of the family is a disabled person, and the family needs an extension because of the disability, the HA must consider whether to grant a request to extend the term of the certificate or voucher (up to the maximum extension allowed under paragraph (b)(1) of this section) as a reasonable accommodation.

(c) *Suspension of term.* The HA policy may or may not provide for suspension of the initial or any extended term of the certificate or voucher. At its discretion, and in accordance with HA policy as described in the HA administrative plan, the HA may grant a family a suspension of the certificate or voucher term if the family has submitted a request for lease approval during the term of the certificate or voucher. (§982.4 (definition of "suspension"); §982.54(d)(2)) The HA may grant a suspension for any part of the period after the family has submitted a request for lease approval up to the time when the HA approves or denies the request.

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

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

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

**§982.304 Illegal discrimination: HA assistance to family.**

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

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

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

**§982.305 HA approval to lease a unit.**

(a) *Program requirements.* The HA may not give approval for the family to lease a dwelling unit, or execute a HAP contract, until the HA has determined that all the following meet program requirements:

- (1) The unit is eligible;
- (2) The unit has been inspected by the HA and passes HQS;
- (3) The lease is approvable and includes the lease addendum;
- (4) The rent to owner is reasonable; and
- (5) For a unit leased under the certificate program, the total of contract rent plus any utility allowance does not exceed the FMR/exception rent limit.

(b) *Actions before lease term.* All of the following must always be completed before the beginning of the lease term:

- (1) The HA has inspected the unit, and has determined that the unit satisfies the HQS;
- (2) The landlord and the tenant have executed the lease; and
- (3) The HA has approved leasing of the unit in accordance with program requirements.

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

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

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

(4) Any HAP contract executed after the 60 day period is void, and the HA may not pay any housing assistance payment to the owner.

(d) *Notice to family and owner.* After receiving the family's request for approval to lease a unit, the HA must promptly notify the family and owner

whether the assisted tenancy is approved.

(e) *Procedure after HA approval.* If the HA has given approval for the family to lease the unit, the owner and the HA execute the HAP contract.

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

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

**§ 982.306 HA disapproval of owner.**

(a) The HA must not approve a unit if the HA has been informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

(b) When directed by HUD, the HA must not approve a unit if:

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

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

(c) In its administrative discretion, the HA may deny approval to lease a unit from an owner for any of the following reasons:

(1) The owner has violated obligations under a housing assistance payments contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

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

(3) The owner has engaged in drug-trafficking;

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

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

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

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

(e) For purposes of this section, "owner" includes a principal or other interested party.

**§ 982.307 Owner responsibility for screening tenants.**

(a) *Owner screening.* (1) Listing a family on the HA waiting list, or selecting a family for participation in the program, is not a representation by the HA to the owner about the family's expected behavior, or the family's suitability for tenancy. At or before HA approval to lease a unit, the HA must inform the owner that the HA has not screened the family's behavior or suitability for tenancy and that such screening is the owner's own responsibility.

(2) Owners are permitted and encouraged to screen families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of others to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the life, safety or property of others; and

(v) Compliance with other essential conditions of tenancy.

(b) *HA information about tenant.* (1) The HA must give the owner:

(i) The family's current and prior address (as shown in the HA records); and

(ii) The name and address (if known to the HA) of the landlord at the family's current and prior address.

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

(3) The HA must give the family a statement of the HA policy on providing information to owners. The statement must be included in the information packet that is given to a family selected to participate in the program. The HA policy must provide that the

HA will give the same types of information to all families and to all owners.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996]

**§ 982.308 Lease.**

(a) *Tenant's legal capacity to enter lease.* The tenant must have legal capacity to enter into a lease under State or local law.

(b) *HA approval of lease.* The assisted lease between the tenant and owner (including any new lease or lease revision) must be approved by the HA. Before approving the lease or revision, the HA must determine that the lease meets the requirements of this section.

(c) *Required lease provisions.* (1) "Lease addendum" means the lease language required by HUD.

(2) The lease must include word-for-word all provisions of the lease addendum (e.g., by adding the lease addendum to the form of lease used by the owner for unassisted tenants). However, the HA may not require families and owners to use a model program lease.

(3) If there is any conflict between the lease addendum and any other provisions of the lease, the provisions required by HUD shall control.

(d) *Prohibited lease provisions.* The lease addendum must state that the following types of lease provisions are prohibited:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner, in a lawsuit brought in connection with the lease.

(2) *Treatment of personal property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant, and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property left in the dwelling unit after the tenant has moved out. The owner may dispose of this personal property in accordance with State and local law.

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agent legally responsible for any action or failure to act, whether intentional or negligent.

(4) *Waiver of notice.* Agreement by the tenant that the owner may bring a lawsuit against the tenant without notice to the tenant.

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury.

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive any right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay the owner's attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. However, the tenant may be obligated to pay costs if the tenant loses.

(e) *Utilities and appliances.* The lease must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

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

**§ 982.309 Term of assisted tenancy.**

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

(2) The HAP contract terminates if the lease terminates.

(b) *Term of lease.* (1) The initial term of the lease must be for at least one year.

(2) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

(i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or

(ii) For automatic indefinite extension of the lease term.

(3) The term of the lease terminates if any of the following occurs:

(i) The owner terminates the lease;

(ii) The tenant terminates the lease;

(iii) The owner and the tenant agree to terminate the lease;

(iv) The HA terminates the HAP contract; or

(v) The HA terminates assistance for the family.

(c) *Relation of lease to ACC.* The HA may approve the lease, and execute the HAP contract, even if there is less than one year remaining from the beginning of the lease term to the end of the last expiring funding increment under the consolidated ACC.

(d) *Lease termination by the family.* (1) The family may terminate the lease at any time after the first year. The lease may not require the family to give more than 60 calendar days notice of such termination to the owner.

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

(e) *New lease or revision.* (1) Any new lease or lease revision must be approved in advance by the HA. The new lease or revision must meet the requirements of this section. The HA and owner must enter a new HAP contract for the tenancy under the new or revised lease.

(2) The owner may offer the family a new lease, for a term beginning at any time after the initial term. The owner must give the tenant written notice of the offer, with a copy to the HA, at least 60 calendar days before the proposed beginning date of the new lease term. The offer must specify a reasonable time limit for acceptance by the family.

(f) *Move from unit.* The family must notify the HA and the owner before the family moves out of the unit. Failure to do this is a breach of family obligations under the program.

### § 982.310 Owner termination of tenancy.

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

(1) Serious or repeated violation of the terms and conditions of the lease;

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

(3) Other good cause.

(b) *Nonpayment by HA: Not grounds for termination of tenancy.* (1) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract between the owner and the HA.

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

(c) *Criminal activity.* Any of the following types of criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control shall be cause for termination of tenancy:

(1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;

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

(3) Any drug-related criminal activity on or near the premises.

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

(i) Failure by the family to accept the offer of a new lease or revision;

(ii) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;

(iii) The owner's desire to use the unit for personal or family use, or for a

purpose other than as a residential rental unit; or

(iv) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to lease the unit at a higher rental). (For statutory 90 day notice requirement if the owner is terminating the tenancy for a business or economic reason, see § 982.455.)

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

(e) *Owner notice*—(1) *Notice of grounds.*

(i) The owner must give the tenant a written notice that specifies the grounds for termination of tenancy. The notice of grounds must be given at or before commencement of the eviction action.

(ii) The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

(2) *Eviction notice.* (i) Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.

(ii) The owner must give the HA a copy of any owner eviction notice to the tenant.

(3) *90 day notice: HAP contract termination.* The owner must give 90 calendar days notice of HAP contract termination (to HUD, the HA and the family) in accordance with § 982.455 in the following cases:

(i) If the owner terminates the tenancy for other good cause that is a business or economic reason; or

(ii) At “expiration” of the HAP contract. (“Expiration” for this purpose is defined at § 982.455(b)(2)(iii).)

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

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

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

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

### § 982.311 When assistance is paid.

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

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

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

(1) The lease terminates;

(2) The HAP contract terminates; or

(3) The HA terminates assistance for the family.

(d) *Family move-out.* (1) If the family moves out of the unit, the HA may not make any housing assistance payment to the owner for any month after the month when the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

(2) If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted

unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

**§ 982.312 Absence from unit.**

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

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

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

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

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

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

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

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

(2) Any provision for resumption of assistance after an absence, including

readmission or resumption of assistance to the family.

**§ 982.313 Security deposit: Amounts owed by tenant.**

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

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

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

(d) The owner must give the tenant a written list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the tenant.

(e) If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant.

**§ 982.314 Move with continued tenant-based assistance.**

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

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

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

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

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

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

(3) The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice

to the owner, for owner breach or otherwise).

(c) *How many moves.* (1) A participant family may move one or more times with continued assistance under the program, either inside the HA jurisdiction, or under the portability procedures. (See §982.353)

(2) The HA may establish:

(i) Policies that prohibit any move by the family during the initial year of assisted occupancy; and

(ii) Policies that prohibit more than one move by the family during any one year period.

(3) The HA policies may apply to moves within the HA jurisdiction by a participant family, and to moves by a participant family outside the HA jurisdiction under portability procedures.

(d) *Notice that family wants to move.* (1) If the family terminates the lease on notice to the owner, the family must give the HA a copy of the notice at the same time.

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

(e) *When HA may deny permission to move.* (1) The HA may deny permission to move if the HA does not have sufficient funding for continued assistance.

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

**§982.315 Family break-up.**

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

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

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

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

(3) Whether family members are forced to leave the unit as a result of actual or threatened physical violence against family members by a spouse or other member of the household.

(4) Other factors specified by the HA.

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

**Subpart H—Where Family Can Live and Move**

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

**§982.351 Overview.**

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

(a) Assistance for a family that rents a dwelling unit in the jurisdiction of the HA that originally selected the family for tenant-based assistance.

(b) "Portability" assistance for a family that rents a unit outside the jurisdiction of the initial HA.

**§982.352 Eligible housing.**

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

(1) A public housing or Indian housing unit;

(2) A unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);

(3) Nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services;

(4) College or other school dormitories;

(5) Units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(6) A unit occupied by its owner or by a person with any interest in the dwelling unit. (However, assistance may be provided for a family residing in a cooperative. In the certificate program, assistance may be provided to the owner of a manufactured home leasing a manufactured home space. In the case of shared housing, an owner unrelated to the assisted family may reside in the unit, but assistance may not be paid on behalf of the resident owner.); and

(7) For provisions on HA disapproval of an owner, see § 982.306.

(b) *HA-owned housing.* (1) A unit that is owned by the HA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HA) may only be assisted under the tenant-based program if:

(i) The family has been informed by the HA, both orally and in writing, that the family has the right to select any eligible dwelling unit, and an HA-owned unit is freely selected by the family, without HA pressure or steering;

(ii) The unit is not ineligible housing;

(iii) During assisted occupancy, the family does not benefit from any form of housing subsidy prohibited under paragraph (c) of this section;

(iv) The initial contract rent (for a certificate program unit) and the initial rent to owner (for a voucher program unit) has been approved by HUD before execution of the HAP contract and commencement of the assisted lease term; and

(v) Any adjustment of the contract rent (for a certificate program unit) and any changes in the rent to owner (for a voucher program unit) is approved in advance by HUD.

(2) The HA as owner is subject to the same program requirements that apply to other owners in the program.

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

(1) Public or Indian housing assistance;

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

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

(4) Section 101 rent supplements;

(5) Section 236 rental assistance payments;

(6) Tenant-based assistance under the HOME Program;

(7) Rental assistance payments under Section 521 of the Housing Act of 1949 (a Farmers Home Administration program);

(8) Any local or State rent subsidy;

or

(9) Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, "housing subsidy" does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

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

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

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

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

(b) *Portability: Assistance outside the initial HA jurisdiction.* Except as provided in paragraph (c) or (d) of this section, the family may receive tenant-based assistance to lease a unit outside the initial HA jurisdiction:

(1) In the same State as the initial HA;

(2) In the same metropolitan statistical area (MSA) as the initial HA, but in a different State;

(3) In an MSA that is next to the same MSA as the initial HA, but in a different State; or

(4) In the jurisdiction of an HA anywhere in the United States that is administering a tenant-based program.

(c) *Nonresident applicants.* (1) This paragraph (c) applies if neither the household head or spouse of an assisted family already had a "domicile" (legal residence) in the jurisdiction of the initial HA at the time when the family first submitted an application for participation in the program to the initial HA.

(2) During the 12 month period from the time when the family is admitted to the program, the family does not have any right to lease a unit outside the initial HA jurisdiction. During this period, the family may lease a unit located anywhere in the jurisdiction of the initial HA.

(3) If both the initial HA and a receiving HA agree, the family may lease a unit outside the HA jurisdiction under portability procedures.

(d) *Income eligibility.* (1) For admission to the certificate or voucher program, a family must be income eligible in the area where the family initially leases a unit with assistance in the certificate or voucher program.

(2) A portable family transferring between the certificate and voucher programs must be income-eligible for the new program in the area where the family leases an assisted unit. This requirement applies if the family is either:

(i) Transferring from the initial HA certificate program to the receiving HA voucher program; or

(ii) Transferring from the initial HA voucher program to the receiving HA certificate program.

(3) If a portable family was already a participant in the initial HA certificate or voucher program, income eligibility is not redetermined unless the family transfers between the programs.

(e) *Leasing in-place.* If the dwelling unit is approvable, a family may select the dwelling unit occupied by the family before selection for participation in the program.

(f) *Freedom of choice.* The HA may not directly or indirectly reduce the family's opportunity to select among avail-

able units except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g. prohibition on use of ineligible housing, housing not meeting HQS, or housing for which the contract rent (certificate program) or rent to owner (voucher program) exceeds a reasonable rent).

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 61 FR 42131, Aug. 13, 1996]

**§ 982.354 Portability: Administration by initial HA outside the initial HA jurisdiction.**

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial HA jurisdiction, the initial HA must administer assistance for the family if:

(1) The unit is located within the same State as the initial HA, in the same metropolitan statistical area (MSA) as the initial HA (but in a different State), or in an MSA that is next to the same MSA as the initial HA (but in a different State); and

(2) No other HA with a tenant-based program has jurisdiction in the area where the unit is located.

(b) In these conditions, the family remains in the program of the initial HA. The initial HA has the same responsibilities for administration of assistance for the family living outside the HA jurisdiction as for other families assisted by the HA, within the HA jurisdiction. For the purpose of permitting HA administration of program assistance for the family in the area outside of the HA jurisdiction as defined by State and local law (and thereby to satisfy the family's right to portability under federal law), the federal law and this regulation preempt limits on the HA jurisdiction under State and local law.

(c) The initial HA may choose to use another HA, a private management entity or other contractor or agent to help the initial HA administer assistance outside the HA jurisdiction as defined by State and local law.

**§ 982.355 Portability: Administration by receiving HA.**

(a) When a family moves under portability (in accordance with § 982.353(b))

to an area outside the initial HA jurisdiction, another HA (the "receiving HA") must administer assistance for the family if an HA with a tenant-based program has jurisdiction in the area where the unit is located.

(b)(1) In these conditions, an HA with jurisdiction in the area where the family wants to lease a unit must issue the family a certificate or voucher. If there is more than one such HA, the initial HA may choose the receiving HA.

(2) If the family was receiving assistance under the initial HA certificate program, but is ineligible for admission to the voucher program, a receiving HA must provide continued assistance under the certificate program. If the family was receiving assistance under the initial HA voucher program, but is ineligible for admission to the certificate program, a receiving HA must provide continued assistance under the voucher program.

(3) If a receiving HA is absorbing the family into its own program (i.e., providing assistance without billing the initial HA), the receiving HA has the choice of assisting the family under either the certificate or voucher program. If a receiving HA is not absorbing the family into its own program, the receiving HA must assist the family under the same program (certificate program or voucher program) as the initial HA.

(c) *Portability procedures.* (1) The initial HA must determine whether the family is income-eligible in the area where the family wants to lease a unit.

(2) The initial HA must advise the family how to contact and request assistance from the receiving HA. The initial HA must promptly notify the receiving HA to expect the family.

(3) The family must promptly contact the receiving HA, and comply with receiving HA procedures for incoming portable families.

(4) The initial HA must give the receiving HA the most recent HUD Form 50058 (Family Report) for the family, and related verification information. If the receiving HA opts to conduct a new reexamination, the receiving HA may not delay issuing the family a voucher or certificate or otherwise delay approval of a unit unless the recertifi-

cation is necessary to determine income eligibility.

(5) When the portable family requests assistance from the receiving HA, the receiving HA must promptly inform the initial HA whether the receiving HA will bill the initial HA for assistance on behalf of the portable family, or will absorb the family into its own program.

(6) The receiving HA must issue a certificate or voucher to the family. The term of the receiving HA certificate or voucher may not expire before the expiration date of any initial HA certificate or voucher. The receiving HA must determine whether to extend the certificate or voucher term. The family must submit a request for lease approval to the receiving HA during the term of the receiving HA certificate or voucher.

(7) The receiving HA must determine the family unit size for the portable family. The family unit size is determined in accordance with the subsidy standards of the receiving HA.

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

(9) To provide tenant-based assistance for portable families, the receiving HA must perform all HA program functions, such as reexaminations of family income and composition. At any time, either the initial HA or the receiving HA may make a determination to deny or terminate assistance to the family in accordance with § 982.552.

(d) *Absorption by the receiving HA.* (1) If funding is available under the consolidated ACC for the receiving HA certificate or voucher program when the portable family is received, the receiving HA may absorb the family into the receiving HA certificate or voucher program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving HA tenant-based program.

(2) HUD may require that the receiving HA absorb all or a portion of the portable families.

(e) *Portability Billing.* (1) To cover assistance for a portable family, the receiving HA may bill the initial HA for housing assistance payments and administrative fees. This paragraph (e) describes the billing procedure.

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

(3) The initial HA must promptly reimburse the receiving HA for 80 percent of the initial HA on-going administrative fee for each unit month that the family receives assistance under the tenant-based programs from the receiving HA. If both HAs agree, the HAs may negotiate a different amount of reimbursement.

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

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

(6) An HA must manage the HA tenant-based programs in a manner that ensures that the HA has the financial ability to provide assistance for families that move out of the HA program under the portability procedures that have not been absorbed by the receiving HA, as well as for families that remain in the HA program.

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

(f) *Portability funding.* (1) HUD may transfer funds for assistance to portable families to the receiving HA from funds available under the initial HA ACC.

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

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

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

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996]

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

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

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

(a) *Performance and acceptability requirements.* (1) This section states the housing quality standards (HQS) for housing assisted in the programs. Program housing must comply with the HQS, both at initial occupancy of the dwelling unit, and during the term of the assisted lease.

(2)(i) The HQS consist of:

(A) Performance requirements; and

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

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

(A) Sanitary facilities;

(B) Food preparation and refuse disposal;

(C) Space and security;

(D) Thermal environment;

(E) Illumination and electricity;

(F) Structure and materials;

(G) Interior air quality;

(H) Water supply;

(I) Lead-based paint;

(J) Access;

(K) Site and neighborhood;

(L) Sanitary condition; and

(M) Smoke detectors.

(3) All program housing must meet the HQS performance requirements

both at commencement of assisted occupancy, and throughout the assisted tenancy.

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

(ii) HUD may grant approval for the HA to use acceptability criteria variations that are based on local codes or national standards that satisfy the purposes of the HQS.

(iii) HUD may approve acceptability criteria variations because of local climatic or geographic conditions.

(iv) HUD will not approve acceptability criteria variations that will unduly limit the amount and types of available rental housing stock.

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

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

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

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

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

(c) *Food preparation and refuse disposal*—(1) *Performance requirement.* (i) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner.

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

(2) *Acceptability criteria.* (i) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the

equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A microwave oven may be substituted for a tenant-supplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees and microwave ovens are furnished instead of an oven and stove or range to both subsidized and unsubsidized tenants in the building or premises.

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

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

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

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

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

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

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

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

(e) *Thermal environment*—(1) *Performance requirement.* The dwelling unit

must have and be capable of maintaining a thermal environment healthy for the human body.

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

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

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

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

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

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

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

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

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

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

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

(v) Elevators must be working and safe.

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

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

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

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

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

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

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

(j) *Lead-based paint performance requirement—(1) Purpose and applicability.*

(i) The purpose of paragraph (j) of this section is to implement section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning for units assisted under this part. Paragraph (j) of this section is issued under 24 CFR 35.24 (b)(4) and supersedes, for all housing to which it applies, the requirements of subpart C of 24 CFR part 35.

(ii) The requirements of paragraph (j) of this section do not apply to 0-bedroom units, units that are certified by a qualified inspector to be free of lead-

based paint, or units designated exclusively for elderly. The requirements of subpart A of 24 CFR part 35 apply to all units constructed prior to 1978 covered by a HAP contract under part 982.

(2) *Definitions.*

*Chewable surface.* Protruding painted surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age; for example, protruding corners, window sills and frames, doors and frames, and other protruding woodwork.

*Component.* An element of a residential structure identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

*Defective paint surface.* A surface on which the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level (EBL).* Excessive absorption of lead. Excessive absorption is a confirmed concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter) for a single test or of 15-19 ug/dl in two consecutive tests 3-4 months apart.

*HEPA* means a high efficiency particle accumulator as used in lead abatement vacuum cleaners.

*Lead-based paint.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 milligram per centimeter squared (mg/cm<sup>2</sup>), or 0.5 percent by weight or 5000 parts per million (PPM).

(3) *Requirements for pre-1978 units with children under 6.* (i) If a dwelling unit constructed before 1978 is occupied by a family that includes a child under the age of six years, the initial and each periodic inspection (as required under this part), must include a visual inspection for defective paint surfaces. If defective paint surfaces are found, such surfaces must be treated in accordance with paragraph (j)(6) of this section.

(ii) The HA may exempt from such treatment defective paint surfaces that are found in a report by a qualified lead-based paint inspector not to be lead-based paint, as defined in paragraph (j)(2) of this section. For purposes of this section, a qualified lead-based paint inspector is a State or

local health or housing agency, a lead-based paint inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD.

(iii) Treatment of defective paint surfaces required under this section must be completed within 30 calendar days of HA notification to the owner. When weather conditions prevent treatment of the defective paint conditions on exterior surfaces within the 30 day period, treatment as required by paragraph (j)(6) of this section may be delayed for a reasonable time.

(iv) The requirements in this paragraph (j)(3) apply to:

(A) All painted interior surfaces within the unit (including ceilings but excluding furniture);

(B) The entrance and hallway providing access to a unit in a multi-unit building; and

(C) Exterior surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age (including walls, stairs, decks, porches, railings, windows and doors, but excluding outbuildings such as garages and sheds).

(4) *Additional requirements for pre-1978 units with children under 6 with an EBL.*

(i) In addition to the requirements of paragraph (j)(3) of this section, for a dwelling unit constructed before 1978 that is occupied by a family with a child under the age of six years with an identified EBL condition, the initial and each periodic inspection (as required under this part) must include a test for lead-based paint on chewable surfaces. Testing is not required if previous testing of chewable surfaces is negative for lead-based paint or if the chewable surfaces have already been treated.

(ii) Testing must be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Where lead-based paint on chewable surfaces is identified, treatment of the paint surface in accordance with paragraph (j)(6) of this section is required, and treatment shall

be completed within the time limits in paragraph (j)(3) of this section.

(iii) The requirements in paragraph (j)(4) of this section apply to all protruding painted surfaces up to five feet from the floor or ground that are readily accessible to children under six years of age:

(A) Within the unit;

(B) The entrance and hallway providing access to a unit in a multi-unit building; and

(C) Exterior surfaces (including walls, stairs, decks, porches, railings, windows and doors, but excluding out-buildings such as garages and sheds).

(5) *Treatment of chewable surfaces without testing.* In lieu of the procedures set forth in paragraph (j)(4) of this section, the HA may, at its discretion, waive the testing requirement and require the owner to treat all interior and exterior chewable surfaces in accordance with the methods set out in paragraph (j)(6) of this section.

(6) *Treatment methods and requirements.* Treatment of defective paint surfaces and chewable surfaces must consist of covering or removal of the paint in accordance with the following requirements:

(i) A defective paint surface shall be treated if the total area of defective paint on a component is:

(A) More than 10 square feet on an exterior wall;

(B) More than 2 square feet on an interior or exterior component with a large surface area, excluding exterior walls and including, but not limited to, ceilings, floors, doors, and interior walls; or

(C) More than 10 percent of the total surface area on an interior or exterior component with a small surface area, including, but not limited to, window sills, baseboards and trim.

(ii) Acceptable methods of treatment are: removal by wet scraping, wet sanding, chemical stripping on or off site, replacing painted components, scraping with infra-red or coil type heat gun with temperatures below 1100 degrees, HEPA vacuum sanding, HEPA vacuum needle gun, contained hydroblasting or high pressure wash with HEPA vacuum, and abrasive sandblasting with HEPA vacuum. Surfaces must be covered with durable materials with joints

and edges sealed and caulked as needed to prevent the escape of lead contaminated dust.

(iii) Prohibited methods of removal are: open flame burning or torching; machine sanding or grinding without a HEPA exhaust; uncontained hydroblasting or high pressure wash; and dry scraping except around electrical outlets or except when treating defective paint spots no more than two square feet in any one interior room or space (hallway, pantry, etc.) or totaling no more than twenty square feet on exterior surfaces.

(iv) During exterior treatment soil and playground equipment must be protected from contamination.

(v) All treatment procedures must be concluded with a thorough cleaning of all surfaces in the room or area of treatment to remove fine dust particles. Cleanup must be accomplished by wet washing surfaces with a lead solubilizing detergent such as trisodium phosphate or an equivalent solution.

(vi) Waste and debris must be disposed of in accordance with all applicable Federal, state and local laws.

(7) *Tenant protection.* The owner must take appropriate action to protect residents and their belongings from hazards associated with treatment procedures. Residents must not enter spaces undergoing treatment until cleanup is completed. Personal belongings that are in work areas must be relocated or otherwise protected from contamination.

(8) *Owner information responsibilities.* Prior to execution of the HAP contract, the owner must inform the HA and the family of any knowledge of the presence of lead-based paint on the surfaces of the residential unit.

(9) *HA data collection and record-keeping responsibilities.* (i) The HA must attempt to obtain annually from local health agencies the names and addresses of children with identified EBLs and must annually match this information with the names and addresses of participants under this part. If a match occurs, the HA must determine whether local health officials have tested the unit for lead-based paint. If the unit has lead-based paint the HA must require the owner to treat the lead-based

paint. If the owner does not complete the corrective actions required by this section, the family must be issued a certificate or voucher to move.

(ii) The HA must keep a copy of each inspection report for at least three years. If a dwelling unit requires testing, or if the dwelling unit requires treatment of chewable surfaces based on the testing, the HA must keep the test results indefinitely and, if applicable, the owner certification of treatment. The records must indicate which chewable surfaces in the dwelling units have been tested and which chewable surfaces in the units have been treated. If records establish that certain chewable surfaces were tested or tested and treated in accordance with the standards prescribed in this section, such chewable surfaces do not have to be tested or treated at any subsequent time.

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

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

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

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

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

(n) *Smoke detectors performance requirement—(1) Except as provided in paragraph (n)(2) of this section, each*

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

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

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996]

#### § 982.402 Subsidy standards.

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Effect of family unit size—maximum subsidy.* The family unit size, as determined for a family under the HA subsidy standards, is used to determine the maximum rent subsidy for the family:

(1) *Certificate program.* HUD establishes fair market rents by number of bedrooms. The sum of the initial contract rent plus any utility allowance may not exceed either:

(i) The FMR/exception rent limit for the family unit size; or

(ii) The FMR/exception rent limit for the unit rented by the family.

(2) *Voucher program.* The HA establishes payment standards by number of bedrooms. The payment standard for the family must be the lower of:

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

(ii) The payment standard for the unit rented by the family.

(d) *Size of unit occupied by family.* (1) The family may lease an otherwise acceptable dwelling unit with fewer bedrooms than the family unit size. However, the dwelling unit must meet the applicable HQS space requirements.

(2) The family may lease an otherwise acceptable dwelling unit with more bedrooms than the family unit size.

**§ 982.403 Terminating HAP contract: When unit is too big or too small.**

(a) *Violation of HQS space standards.* (1) Paragraph (a) of this section applies to the tenant-based certificate program and voucher program.

(2) If the HA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the HA must issue the family a new certificate or voucher, and the family and HA must try to find an acceptable unit as soon as possible.

(3) If an acceptable unit is available for rental by the family, the HA must terminate the HAP contract in accordance with its terms.

(b) *Certificate program only—Subsidy too big for family size.* (1) Paragraph (b) of this section applies to the tenant-based certificate program.

(2) The HA must issue the family a new certificate, and the family and HA must try to find an acceptable unit as soon as possible if:

(i) The family is residing in a dwelling unit with a larger number of bedrooms than appropriate for the family unit size under the HA subsidy standards; and

(ii) The gross rent for the unit (sum of the contract rent plus any utility allowance for the unit size leased) exceeds the FMR/exception rent limit for the family unit size under the HA subsidy standards.

(3) The HA must notify the family that exceptions to the subsidy standards may be granted, and the circumstances in which the grant of an exception will be considered by the HA.

(4) If an acceptable unit is available for rental by the family within the FMR/exception rent limit, the HA must terminate the HAP contract in accordance with its terms.

(c) *Termination.* When the HA terminates the HAP contract (under paragraphs (a) or (b) of this section):

(1) The HA must notify the family and the owner of the termination; and

(2) The HAP contract terminates at the end of the calendar month that follows the calendar month in which the HA gives such notice to the owner.

(3) The family may move to a new unit in accordance with §982.314.

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

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

**§982.404 Maintenance: Owner and family responsibility; HA remedies.**

(a) *Owner obligation.* (1) The owner must maintain the unit in accordance with HQS.

(2) If the owner fails to maintain the dwelling unit in accordance with HQS, the HA must take prompt and vigorous action to enforce the owner obligations. HA remedies for such breach of the HQS include termination, suspension or reduction of housing assistance payments and termination of the HAP contract.

(3) The HA must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the HA and the HA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any HA-approved extension).

(4) The owner is not responsible for a breach of the HQS that is not caused by the owner, and for which the family is responsible (as provided in §982.404(b) and §982.551(c)). (However, the HA may terminate assistance to a family be-

cause of HQS breach caused by the family.)

(b) *Family obligation.* (1) The family is responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the tenant;

(ii) The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant; or

(iii) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

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

(3) If the family has caused a breach of the HQS, the HA must take prompt and vigorous action to enforce the family obligations. The HA may terminate assistance for the family in accordance with §982.552.

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

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

**§982.405 HA periodic unit inspection.**

(a) The HA must inspect the unit leased to a family at least annually, and at other times as needed, to determine if the unit meets HQS.

(b) The HA must conduct supervisory quality control HQS inspections.

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

(d) The HA must notify the owner of defects shown by the inspection.

(e) The HA may not charge the family or owner for initial inspection or re-inspection of the unit.

**§982.406 Enforcement of HQS.**

Part 982 does not create any right of the family, or any party other than HUD or the HA, to require enforcement of the HQS requirements by HUD or the HA, or to assert any claim against

§ 982.451

24 CFR Ch. IX (4-1-97 Edition)

HUD or the HA, for damages, injunction or other relief, for alleged failure to enforce the HQS.

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

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

**Subpart J—Housing Assistance Payments Contract and Owner Responsibility**

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

**§ 982.451 Housing assistance payments contract.**

(a) The housing assistance payments contract (HAP contract) is a contract between the HA and an owner. In the HAP contract for tenant-based assistance, the owner agrees to lease a specified dwelling unit to a specified eligible family, and the HA agrees to make monthly housing assistance payments to the owner for the family.

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

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

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

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

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

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

(A) The rent to owner; minus

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

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

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

(5) The HA must pay the housing assistance payment promptly when due to the owner in accordance with the HAP contract. If the HA fails to make timely payment, the HA may be obligated to pay a late payment fee in accordance with State or local law. However, unless another source is authorized by HUD the HA may only use the following sources for payment of any such late payment fee:

- (i) Administrative fee income; or
- (ii) The administrative fee reserve.

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996]

**§ 982.452 Owner responsibilities.**

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

(b) The owner is responsible for:

(1) Performing all management and rental functions for the assisted unit, including selecting a certificate-holder or voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit.

(2) Maintaining the unit in accordance with HQS, including performance of ordinary and extraordinary maintenance.

(3) Complying with equal opportunity requirements.

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

(5) Collecting from the family:

(i) Any security deposit.

(ii) The tenant contribution

(the part of rent to owner not covered by the housing assistance payment).

(iii) Any charges for unit damage by the family.

(6) Enforcing tenant obligations under the lease.

(7) Paying for utilities and services (unless paid by the family under the lease).

(c) For provisions on modifications to a dwelling unit occupied or to be occupied by a disabled person, see 24 CFR 100.203.

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

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

**§ 982.453 Owner breach of contract.**

(a) Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:

(1) If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.

(2) If the owner has violated any obligation under any other housing assistance payments contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).

(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in drug-trafficking.

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

**§ 982.454 Termination of HAP contract: Insufficient funding.**

The HA may terminate the HAP contract if the HA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program. See § 982.455 concerning owner notice of termination.

**§ 982.455 Termination of HAP contract: Expiration and opt-out.**

(a) *Automatic.* The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.

(b) *Owner termination notice.* (1) *Law.* Paragraph (b) of this section implements Section 8(c) (9) and (10) of the 1937 Act (42 U.S.C. 1437f(c) (9) and (10)) for the tenant-based Section 8 programs.

(2) *Definitions.* The following terms are defined for purposes of this section:

(i) *Termination.* Termination of the HAP contract because of:

(A) Owner opt-out; or

(B) Expiration of the HAP contract.

(ii) *Opt-out.* Owner's decision to terminate tenancy of an assisted family for "other good cause" that is a business or economic reason for termination of tenancy. See § 982.310 (a)(3) and (d).

(iii) *Expiration.* "Expiration" means the occurrence of either of the following events:

(A) Automatic termination of the HAP contract when 180 calendar days have passed since the last housing assistance payment.

(B) An HA determination, in accordance with HUD requirements, that the HAP contract must be terminated because there is insufficient funding under the consolidated ACC to support continued assistance for families in the program.

(3) *Owner termination notice.* Not less than 90 calendar days before a termination of a tenant-based HAP contract because of an opt-out or expiration, the owner must provide written notice of the termination to the HUD field office, the HA and the family. The owner's notice must specify the reasons for the termination. The notice must contain sufficient detail to enable the HUD field office to evaluate whether the termination is lawful and whether there are additional actions that can be taken by HUD to avoid the termination. The owner's notice must state that the owner and the HA may agree to a renewal of the HAP contract, thus avoiding the termination.

(4) *HUD review of owner termination notice.* (i) The HUD field office must review the owner's notice, and consider

whether there are additional actions which should be taken to avoid the termination.

(ii) For a unit assisted under the certificate program:

(A) The HUD field office will determine whether the HA has properly adjusted the contract rent in accordance with the HAP contract and HUD regulations. If not the HUD field office will require the HA to make a proper adjustment of the contract rent in accordance with the HAP contract and the regulation.

(B) In case of termination because of an opt-out, the owner must be offered the opportunity to enter into a new HAP contract (and assisted lease) at the maximum initial contract rent allowed (within the FMR/exception rent limit). However, the rent to owner may not exceed the reasonable rent for a comparable unassisted unit.

(iii) The HUD field office will issue a written finding of the legality of the HAP contract termination and the reasons for the termination as stated in the owner's notice, including any actions taken to avoid the termination. Within 30 calendar days of HUD's finding, the owner must provide written notice of HUD's decision to the tenant.

(iv) The owner may proceed with eviction whether the HUD field office approves or disapproves, or fails to complete the required review of the owner notice, before expiration of the 90 calendar day review period.

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

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

**§ 982.456 Third parties.**

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

(b) The family is not a party to or third party beneficiary of the HAP contract. The family may not exercise any right or remedy against the owner under the HAP contract. (However, the tenant may exercise any right or remedies against the owner under the lease between the tenant and the owner.)

(c) The HAP contract shall not be construed as creating any right of the family or other third party (other than

HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the HA or the owner under the HAP contract.

**§ 982.457 Owner refusal to lease.**

(a) Section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)) provides that an owner who has entered into a HAP contract under Section 8 of the 1937 Act on behalf of any tenant in a multifamily housing project shall not refuse:

(1) To lease any available dwelling unit in any multifamily housing project of the owner that rents for an amount not greater than the fair market rent for a comparable unit to a holder of a rental certificate under Section 8 and to enter into a HAP contract respecting the unit, if a proximate cause of the refusal is the status of the prospective tenant as a holder of a certificate; or

(2) To lease any available dwelling unit in any multifamily housing project of the owner to a voucher holder and to enter into a HAP contract respecting the unit, a proximate cause of which is the status of such prospective tenant as a holder of such voucher.

(b) For the purposes of Section 8(t), the term *multifamily housing project* means a residential building containing more than four dwelling units.

**Subpart K—Rent and Housing Assistance Payment—[Reserved]**

**Subpart L—Family Obligations; Denial and Termination of Assistance**

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

**§ 982.551 Obligations of participant.**

(a) *Purpose.* This section states the obligations of a participant family under the program.

(b) *Supplying required information—(1)* The family must supply any information that the HA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). "Information" includes

any requested certification, release or other documentation.

(2) The family must supply any information requested by the HA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. For provisions on reexamination and computation of family income, see 24 CFR part 813.

(3) The family must disclose and verify social security numbers (as provided by part 5, subpart B, of this title) and must sign and submit consent forms for obtaining information in accordance with part 5, subpart B, of this title and 24 CFR part 813.

(4) Any information supplied by the family must be true and complete.

(c) *HQS breach caused by family.* The family is responsible for an HQS breach caused by the family as described in §982.404(b).

(d) *Allowing HA inspection.* The family must allow the HA to inspect the unit at reasonable times and after reasonable notice.

(e) *Violation of lease.* The family may not commit any serious or repeated violation of the lease.

(f) *Family notice of move or lease termination.* The family must notify the HA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See §982.314(d).

(g) *Owner eviction notice.* The family must promptly give the HA a copy of any owner eviction notice.

(h) *Use and occupancy of unit.*—(1) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

(2) The composition of the assisted family residing in the unit must be approved by the HA. The family must promptly inform the HA of the birth, adoption or court-awarded custody of a child. The family must request HA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

(3) The family must promptly notify the HA if any family member no longer resides in the unit.

(4) If the HA has given approval, a foster child or a live-in-aide may reside in the unit. The HA has the discretion to adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining when HA consent may be given or denied.

(5) Members of the household may engage in legal profitmaking activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family.

(6) The family must not sublease or let the unit.

(7) The family must not assign the lease or transfer the unit.

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

(j) *Interest in unit.* The family must not own or have any interest in the unit.

(k) *Fraud and other program violation.* The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

(l) *Crime by family members.* The members of the family may not engage in drug-related criminal activity, or violent criminal activity (see §982.553).

(m) *Other housing assistance.* An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 11119, Mar. 18, 1996; 61 FR 13627, Mar. 27, 1996; 61 FR 27163, May 30, 1996]

**§ 982.552 HA denial or termination of assistance for family.**

(a) *Action or inaction by family.*—(1) This section states the grounds on which an HA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act. The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

(2) Denial of assistance for an applicant may include any or all of the following: denying listing on the HA waiting list, denying or withdrawing a certificate or voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.

(3) Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures.

(4) This section does not limit or affect exercise of the HA rights and remedies against the owner under the HAP contract, including termination, suspension or reduction of housing assistance payments, or termination of the HAP contract.

(b) *Grounds for denial or termination of assistance.* The HA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(1) If the family violates any family obligations under the program (see § 982.551).

(2) If any member of the family has ever been evicted from public housing.

(3) If an HA has ever terminated assistance under the certificate or voucher program for any member of the family.

(4) If any member of the family commits drug-related criminal activity, or violent criminal activity (see § 982.553).

(5) If any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

(6) If the family currently owes rent or other amounts to the HA or to an-

other HA in connection with Section 8 or public housing assistance under the 1937 Act.

(7) If the family has not reimbursed any HA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

(8) If the family breaches an agreement with the HA to pay amounts owed to an HA, or amounts paid to an owner by an HA. (The HA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to an HA or amounts paid to an owner by an HA. The HA may prescribe the terms of the agreement.)

(9) If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation.

(10) If the family has engaged in or threatened abusive or violent behavior toward HA personnel.

(c) *HA discretion to consider circumstances.*—(1) In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, the HA 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, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(2) The HA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The HA may permit the other members of a participant family to continue receiving assistance.

(d) *Requirement to sign consent forms.* The HA must deny or terminate assistance if any member of the family fails to sign and submit consent forms for obtaining information in accordance with 24 CFR part 760 and 24 CFR part 813.

(e) *Restrictions on assistance to noncitizens.* The family must submit required evidence of citizenship or eligible immigration status. See 24 CFR part 5 for a statement of circumstances in which

the HA must deny or terminate assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures. See 24 CFR part 5 for provisions on assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) instead of denial or termination of assistance, and for provisions on deferral of termination of assistance.

(f) *Information for family.* The HA must give the family a written description of:

- (1) Family obligations under the program.
- (2) The grounds on which the HA may deny or terminate assistance because of family action or failure to act.
- (3) The HA informal hearing procedures.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996]

#### § 982.553 Crime by family members.

(a) At any time, the HA may deny assistance to an applicant, or terminate assistance to a participant family if any member of the family commits:

- (1) Drug-related criminal activity; or
- (2) Violent criminal activity.

(b) If the HA seeks to deny or terminate assistance because of illegal use, or possession for personal use, of a controlled substance, such use or possession must have occurred within one year before the date that the HA provides notice to the family of the HA determination to deny or terminate assistance. The HA may not deny or terminate assistance for such use or possession by a family member, if the family member can demonstrate that he or she:

- (1) Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and
- (2) Is recovering, or has recovered from, such addiction and does not currently use or possess controlled substances. The HA may require a family member who has engaged in the illegal use of drugs to submit evidence of par-

ticipation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.

(c) *Evidence of criminal activity.* In determining whether to deny or terminate assistance based on drug-related criminal activity or violent criminal activity, the HA may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

#### § 982.554 Informal review for applicant.

(a) *Notice to applicant.* The HA must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the HA decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

(b) *Informal review process.* The HA must give an applicant an opportunity for an informal review of the HA decision denying assistance to the applicant. The administrative plan must state the HA procedures for conducting an informal review. The HA review procedures must comply with the following:

(1) The review may be conducted by any person or persons designated by the HA, other than a person who made or approved the decision under review or a subordinate of this person.

(2) The applicant must be given an opportunity to present written or oral objections to the HA decision.

(3) The HA must notify the applicant of the HA final decision after the informal review, including a brief statement of the reasons for the final decision.

(c) *When informal review is not required.* The HA is not required to provide the applicant an opportunity for an informal review for any of the following:

(1) Discretionary administrative determinations by the HA.

(2) General policy issues or class grievances.

(3) A determination of the family unit size under the HA subsidy standards.

(4) An HA determination not to approve an extension or suspension of a certificate or voucher term.

(5) An HA determination not to grant approval to lease a unit under the program or to approve a proposed lease.

(6) An HA determination that a unit selected by the applicant is not in compliance with HQS.

(7) An HA determination that the unit is not in accordance with HQS because of the family size or composition.

(d) *Restrictions on assistance for non-citizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996]

**§ 982.555 Informal hearing for participant.**

(a) *When hearing is required.*—(1) An HA must give a participant family an opportunity for an informal hearing to consider whether the following HA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and HA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the HA utility allowance schedule.

(iii) A determination of the family unit size under the HA subsidy standards.

(iv) A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the HA subsidy standards, or the HA determination to deny the family's request for an exception from the standards.

(v) A determination to terminate assistance for a participant family because of the family's action or failure to act (see § 982.552).

(vi) A determination to terminate assistance because the participant family

has been absent from the assisted unit for longer than the maximum period permitted under HA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the HA must give the opportunity for an informal hearing before the HA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The HA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the HA.

(2) General policy issues or class grievances.

(3) Establishment of the HA schedule of utility allowances for families in the program.

(4) An HA determination not to approve an extension or suspension of a certificate or voucher term.

(5) An HA determination not to approve a unit or lease.

(6) An HA determination that an assisted unit is not in compliance with HQS. (However, the HA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in § 982.551(c).)

(7) An HA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the HA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

(c) *Notice to family.* (1) In the cases described in paragraphs (a)(1) (i), (ii) and (iii) of this section, the HA must notify the family that the family may ask for an explanation of the basis of the HA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the HA must give the family prompt written notice that the family may request a hearing. The notice must:

(i) Contain a brief statement of reasons for the decision,

(ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and

(iii) State the deadline for the family to request an informal hearing.

(d) *Expeditious hearing process.* Where a hearing for a participant family is required under this section, the HA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) *Hearing procedures—(1) Administrative plan.* The administrative plan must state the HA procedures for conducting informal hearings for participants.

(2) *Discover—(i) By family.* The family must be given the opportunity to examine before the HA hearing any HA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the HA does not make the document available for examination on request of the family, the HA may not rely on the document at the hearing.

(ii) *By HA.* The HA hearing procedures may provide that the HA must be given the opportunity to examine at HA offices before the HA hearing any family documents that are directly relevant to the hearing. The HA must be allowed to copy any such document at the HA's expense. If the family does not make the document available for examination on request of the HA, the family may not rely on the document at the hearing.

(iii) *Documents.* The term "documents" includes records and regulations.

(3) *Representation of family.* At its own expense, the family may be represented by a lawyer or other representative.

(4) *Hearing officer: Appointment and authority.* (i) The hearing may be conducted by any person or persons designated by the HA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the HA hearing procedures.

(5) *Evidence.* The HA and the family must be given the opportunity to present evidence, and may question

any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) *Issuance of decision.* The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) *Effect of decision.* The HA is not bound by a hearing decision:

(1) Concerning a matter for which the HA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the HA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the HA determines that it is not bound by a hearing decision, the HA must promptly notify the family of the determination, and of the reasons for the determination.

(g) *Restrictions on assistance to noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996]

## Subpart M—Special Housing Types—[Reserved]

### PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

#### Subpart A—General Information

Sec.

983.1 Purpose and applicability.

983.2 Additional definitions.

983.3 Information to be submitted to HUD by the HA concerning its plan to attach assistance to units.

983.4 HUD review of HA plans to attach assistance to units.

983.5 Housing quality standards and construction standards.